

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Kraus Lam LLC  
230 West Monroe Street, Suite 2528  
Chicago, Illinois 60606  
Attention: Edward Lam, Esq.

TAX ID: 01-305-0106 and 01-305-0107

CT-122229-CAF

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

**A POWER OF SALE HAS BEEN GRANTED IN THIS SECURITY INSTRUMENT. IN CERTAIN STATES, A POWER OF SALE MAY ALLOW THE TRUSTEE OR THE GRANTEE TO TAKE THE SUBJECT INTERESTS AND SELL IT WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON DEFAULT BY THE GRANTEE UNDER THIS SECURITY INSTRUMENT.**

**THIS SECURITY INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS.**

**THIS SECURITY INSTRUMENT SECURES PAYMENT OF FUTURE ADVANCES.**

**THIS SECURITY INSTRUMENT COVERS PROCEEDS OF SUBJECT INTERESTS.**

**THIS SECURITY INSTRUMENT COVERS AS-EXTRACTED COLLATERAL AND OTHER MINERALS AND OTHER SUBSTANCES OF VALUE WHICH MAY BE EXTRACTED FROM THE EARTH (INCLUDING WITHOUT LIMITATION OIL, GAS AND HELIUM) AND WHICH WILL BE FINANCED AT THE WELLHEADS OF THE WELL OR WELLS LOCATED ON THE PROPERTIES DESCRIBED IN THE EXHIBITS HERETO. THIS FINANCING STATEMENT IS TO BE FILED OR FILED FOR RECORD, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS OR SIMILAR RECORDS OF THE COUNTY RECORDERS OF THE COUNTIES LISTED ON THE EXHIBITS HERETO. THE GRANTOR HAS AN INTEREST OF RECORD IN THE**

**REAL ESTATE CONCERNED, WHICH INTEREST IS DESCRIBED IN THE EXHIBITS ATTACHED HERETO.**

**PORTIONS OF THE SUBJECT INTERESTS ARE GOODS WHICH ARE OR ARE TO BECOME AFFIXED TO OR FIXTURES ON THE LAND DESCRIBED IN OR REFERRED TO IN THE EXHIBITS HERETO. THIS FINANCING STATEMENT IS TO BE FILED FOR RECORD OR RECORDED, AMONG OTHER PLACES, IN THE REAL ESTATE RECORDS OR SIMILAR RECORDS OF EACH COUNTY IN WHICH SAID LAND OR ANY PORTION THEREOF IS LOCATED. THE GRANTOR IS THE OWNER OF RECORD INTEREST IN THE REAL ESTATE CONCERNED.**

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

THIS SECURITY INSTRUMENT COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.

This **TRUST DEED, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING**, dated as of March 6, 2020 (as may be amended, restated, replaced, supplemented, or otherwise modified from time to time, this "Security Instrument"), is made by **JF FOXBORO PARTNERS, LLC**, a Utah limited liability company (the "Grantor"), having its principal office at: 1148 Legacy Crossing Boulevard, Centerville, Davis County Utah 84014, Attention: Owen Fisher, with respect to the real property described on Exhibit A attached hereto and made a part hereof (the "Land"), to First American Title Insurance Company (the "Trustee"), for the benefit of **NEF PRESERVATION MORTGAGE LOAN FUND I LP**, a Delaware limited partnership (the "Grantee"), having an address at 10 South Riverside Plaza, Suite 1700, Chicago, Illinois 60606, Attn: General Counsel.

**RECITALS:**

WHEREAS, Grantor is the owner of (i) the fee simple interest in the Land and (ii) title to the Improvements (as defined below).

WHEREAS, pursuant to that certain Loan Agreement, of even date herewith (as amended, restated, replaced, supplemented and/or otherwise modified from time to time, the "Loan Agreement"), between Grantor, as borrower, and Grantee, as lender, the Grantee has extended to Grantor certain financial accommodations (the "Loan") in the original principal amount of Forty-Four Million Four Hundred Eighty Thousand and No/100 Dollars (\$44,480,000.00), as evidenced by that certain Promissory Note (as amended, restated, replaced, supplemented and/or otherwise modified from time to time, the "Note"), dated as of March 6, 2020, made by Grantor in favor of Grantee. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement. The Loan shall mature on such date set forth in the Note, but no later than March 5, 2030.

WHEREAS, Grantor and Grantee intend these Recitals to be a material part of this Security Instrument and to secure the Secured Obligations (as defined below).

**ARTICLE I. SECURED INDEBTEDNESS**

NOW, THEREFORE, in consideration of the Loan to Grantor evidenced by the Note and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows:

TO SECURE:

(a) payment and performance of all covenants, conditions, liabilities and obligations of Grantor to Grantee contained in the Loan Agreement and the other Loan Documents;

(b) payment of the indebtedness evidenced by the Note plus all interest and all fees payable thereunder;

(c) payment and performance of all covenants, conditions, liabilities and obligations of Grantor contained in this Security Instrument and any extensions, renewals or modifications hereof;

(d) payment and performance of all covenants, conditions, liabilities and obligations of Grantor contained in the Loan Agreement and each of the other Loan Documents;

(e) without limiting the foregoing, payment of all indebtedness, liabilities, and amounts from time to time incurred by Grantor pursuant to the Note, this Security Instrument, the Loan Agreement or such other Loan Documents, even if the aggregate amount of the monetary obligation outstanding at any one time exceeds the face amount of the Note (all of the foregoing indebtedness and monetary liabilities set forth in clauses (a) through (d) above and this clause (e), collectively, the "Indebtedness"); and

(f) payment of the Indebtedness together with the payment and performance of all other covenants, conditions, liabilities and obligations described and set forth in clauses (a) through (e) above and in this clause (f), collectively, the “Secured Obligations”.

(g) Notwithstanding the foregoing or anything else to the contrary contained in any of the Loan Documents, the parties agree and Grantor acknowledges that this Security Instrument does not secure, and the Secured Obligations do not include, Grantor’s obligations under the Environmental Indemnity Agreement of this date executed by Grantor and certain other parties named therein in favor of Grantee (the “Environmental Indemnity”) nor does it secure the obligations of any guarantor or surety under any guaranty or other surety instrument delivered to Grantee for the purpose of guaranteeing Grantor’s obligations under the Note.

## ARTICLE II. GRANTING CLAUSES

NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH: that Grantor, in consideration of the premises, the Indebtedness evidenced by the Note, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby irrevocably grant and create a first priority lien on and security interest in, subject to the provisions hereof and of the other Loan Documents, and does hereby GRANT, SELL, WARRANT, BARGAIN, TRANSFER, SET OVER, ASSIGN AND CONVEY A SECURITY INTEREST IN AND PLEDGE TO TRUSTEE, IN TRUST, WITH THE POWER OF SALE AND RIGHT OF ENTRY, IN TRUST, for the benefit and use of Grantee and its successors and assigns forever, all of Grantor’s estate, right, title and interest now owned or hereafter acquired in, to and under any and all the following property (collectively, the “Property”):

(A) the Land;

(B) all additional lands, estates and development rights hereafter acquired by Grantor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage, deed to secure debt, deed of trust, or otherwise, be expressly made subject to the lien of this Security Instrument;

(C) all of Grantor’s rights, title, and interests in and to the buildings, foundations, structures, improvements, and fixtures now or hereafter located or erected on or within the Land (the “Improvements”);

(D) all of Grantor’s rights, title and interests in and to (1) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Land, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (2) all air, light, lateral support, development, drainage, oil, gas and mineral rights, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Land and/or the Improvements; (3) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or

hereafter belonging or in any way appertaining to the Land and/or the Improvements; and (4) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land and/or the Improvements (collectively, the "Appurtenances");

(E) all of Grantor's rights, title and interests in and to all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Grantor now has or hereafter acquires an interest, including, without limitation: (1) all reserve, deposit and impound and other accounts of Grantor from time to time; (2) all contracts and agreements relating to the Property (other than the Leases), including operating agreements and management agreements, and all other documents, books and records related to the ownership and operation of the Property (provided, that all of such agreements shall be subordinate to this Security Instrument, and Grantee shall have no responsibility for the performance of Grantor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols); (3) to the extent permitted by law: all consents, Licenses (as defined below) (including any licenses held by Grantor permitting the sale of liquor at any of the Property the transfer and/or assignment of which is permitted by law without filing or other qualification), permits, certificates, government approvals, warranties, guaranties, bonds, letters of credit, causes of action, judgments, claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, taxes, assessments, charges or deposits paid to any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity, all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities; (4) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions; and (5) all "Cash proceeds", "Chattel paper", "Collateral", "Commercial tort claims", "Deposit accounts", "Documents", "Electronic chattel paper", "Equipment", "Fixtures", "General intangibles", "Goods", "Instruments", "Inventory", "Investment property", "Letter of credit rights", "Noncash proceeds", "Payment intangibles", "Proceeds", "Software", "Supporting Obligations", and "Tangible chattel paper", as defined in the Uniform Commercial Code of the state in which the Land is located (the "UCC"), in which Grantor has any interest, wherever located, whether currently owned or hereafter acquired (including, without limitation, all (i) machinery, tools, appliances, apparatus, equipment, and fittings; (ii) rugs, carpets and other floor coverings; (iii) street lights, lamps, and other lighting fixtures; (iv) office maintenance and other supplies; (v) apparatus, appliances, furniture and furnishings, building service equipment, and building materials, supplies and equipment; (vi) heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, cabinets, lockers, and shelving; (vii) lease guarantees, contracts, contract rights, permits, and certificates; (viii) approvals and parcel maps (whether tentative or final), building permits and certificates of occupancy; (ix) names under or by which Grantor may operate or be known and rights to carry on business under any such names or any variant thereof; (x) trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general

intangibles of the Grantor; (xi) management agreements, service contracts, supply contracts or other contracts or agreements; (xii) warranties; (xiii) water stock; (xiv) evidence of ownership of any part of the Property or Improvements that is owned by Grantor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing, maintaining or operating any part of the Property or Improvements; (xv) plans and specifications prepared for construction of improvements on the Property, or any part thereof, and studies, data and drawings related thereto, including, without limitation, studies, data or reports relating to toxic or hazardous wastes or materials located on the Property, all environmental audits, studies and reports, approvals and agreements, and/or Improvements, and contracts and agreements of Grantor relating to the aforesaid plans and specifications or to the aforesaid studies, data, reports and drawings or to the construction of improvements on the Property, including, without limitation, installations of curbs, sidewalks, gutters, landscaping, utility connections and all fixtures and equipment; (xvi) sales agreements, marketing studies, feasibility studies, deposit receipts, escrow agreements and other ancillary documents and agreements entered into by Grantor, and other proceeds of the sale thereof; (xvii) damages, royalties and revenue of every kind, nature and description whatsoever that Grantor may be entitled to receive from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Property; (xviii) refundable deposits made with or other security given to utility companies by Grantor with respect to the Property and/or Improvements; (xix) negotiable certificates of deposit of Grantor in Grantee's possession and all accounts of Grantor maintained with Grantee and each deposit account of Grantor assigned to Grantee pursuant to any agreement; (xx) causes of action, claims, compensation, awards and recoveries for any damage or injury to the Land, and/or the Improvements or for any loss or diminution in value of the Property and/or Improvements; (xxi) books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof; (xxii) guaranties of and security for any of the foregoing; and (xxiii) subject to the terms of the Loan Agreement, any interest rate protection arrangement to which Grantor is a party, including any and all agreements, instruments, documents and contracts now or hereafter entered into by Grantor with respect to any such interest rate protection arrangement (collectively, the "Personalty"); together with all alterations, additions, accessions and improvements to the Property, substitutions therefor, and renewals and replacements thereof, and all proceeds of all of the foregoing;

(F) all of Grantor's right, title and interest in and to all proceeds, judgments, claims, compensation, awards or payments heretofor and hereafter made to Grantor for the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Property or any easement appurtenant thereto, including, without limitation, all proceeds, judgments, claims, compensation awards or payments for changes of grade of streets or any other injury to or decrease in the value of the Property, whether direct or consequential, which awards and payments are hereby assigned to Grantee, who is hereby authorized to collect and receive the proceeds thereof and to give proper receipts and acquittances therefore, and to apply the same toward the payment of the Indebtedness in such order as Grantee may determine in accordance with the provisions of this Security Instrument without regard to the adequacy of Grantee's security hereunder and

notwithstanding the fact that the amount thereof may not then be due and payable, and toward the payment of reasonable counsel fees, costs and disbursements incurred by Grantee in connection with the collection of such awards or payments; and Grantor hereby agrees, upon request, to make, execute and deliver any and all further assignments and other instruments sufficient for the purpose of confirming this assignment of said proceeds, judgments, claims, compensation awards or payments to Grantee, free, clear and discharged of any encumbrances of any kind or nature whatsoever;

(G) all of Grantor's right, title and interest in and to all unearned premiums paid under insurance policies obtained by Grantor now or hereafter obtained by Grantor to the extent the same insure the Property and any other insurance policies required to be maintained pursuant to Section 5.1 of the Loan Agreement to the extent the same insure the Property, including, without limitation, liability insurance policies and Grantor's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on or with respect to the Property (other than liability insurance);

(H) all right, title and interest of Grantor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and Appurtenances to, the Property, hereafter acquired by or released to Grantor or constructed, assembled or placed by Grantor on the Property, and all conversions of the security constituted thereby; immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, to the extent permitted by law, without any further mortgage, conveyance, assignment or other act by Grantor, all such extensions, improvements, betterments, renewals, substitutes and replacements shall become subject to the lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein; and

(I) all of Grantor's right, title and interest in all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of pursuant to the terms hereof.

UPON CONDITION that, so long as no Event of Default (as defined below) has occurred and is continuing, Grantor shall be permitted to possess and use the Property, and to use the rents, issues, profits, revenues and other income of the Property as provided in this Security Instrument, the Loan Agreement and the other Loan Documents.

Should the Indebtedness be paid in full and the Secured Obligations performed in full (in each case other than indemnity obligations under the Loan Documents that are not then due and payable or for which any events or claims that would give rise thereto are not then pending) according to the terms and conditions hereof and of the other Loan Documents, then this Security Instrument shall be cancelled and surrendered and satisfied and released of record by Grantee.



### ARTICLE III. HABENDUM

TO HAVE AND TO HOLD THE PROPERTY hereby conveyed, or mentioned and intended so to be, whether now owned or held or hereafter acquired, subject only to the terms hereof, unto Trustee for the benefit of Grantee with respect to the Property, and their respective successors and assigns, forever, upon the terms and conditions set forth herein and to secure the performance of, and compliance with, the obligations, covenants and conditions of this Security Instrument and the other Loan Documents all as herein set forth.

**3.1 Definitions.** All capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement. Wherever used in this Security Instrument, the following terms, and the singular and plural thereof, shall have the following meanings:

“Appurtenances” shall have the meaning provided in Granting Clause (D).

“Events of Default” shall mean the occurrence of an “Event of Default” pursuant to the Loan Agreement or a default, beyond any applicable notice and cure periods in any other Loan Document.

“Grantor” shall have the meaning provided in the introductory paragraph hereof.

“Grantee” shall have the meaning provided in the introductory paragraph hereof.

“Improvements” shall have the meaning provided in Granting Clause (C).

“Land” shall have the meaning provided in the introductory paragraph hereof.

“Lease” means any lease, license or agreement for use of any part of the Property.

“Licenses” shall mean all certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits required of Grantor for the legal use, occupancy and operation of the Property.

“Loan” shall have the meaning provided in the Recitals.

“Loan Agreement” shall have the meaning provided in the Recitals.

“Note” shall have the meaning provided in the Recitals.

“Personalty” shall have the meaning provided in Granting Clause (E).

“Property” shall have the meaning provided in the recitals to the Granting Clauses.

“Rents” shall mean all rents, income, and profits, including, but not limited to all fixed rent and all additional rent, and any other rent collected for pass-through expenses, including without limitation taxes, insurance, operating and occupancy expenses and common area

maintenance expenses, arising from such Leases, as well as all of Grantor's right, title and interest in the right to receive and collect the revenues, income, rents, security deposits, issues, profits, royalties and other benefits payable under any of the Leases, and all revenues, income, rents, issues and profits otherwise arising from the use or enjoyment of all or any portion of the Property.

"Secured Obligations" shall have the meaning provided in Article I.

"Trustee" shall have the meaning provided in the introductory paragraph hereof.

"UCC" shall have the meaning provided in Granting Clause (E).

(a) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument, and recital, section, schedule and exhibit references are to this Security Instrument unless otherwise specified. The words "includes" and "including" are not limiting and mean "including without limitation".

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to and including," and the word "through" means "to and including."

(c) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto executed in writing by all of the parties thereto and, if Grantee's consent was required for the original of any such document, consented to by Grantee. All references in this Security Instrument to the plural of any document described herein shall mean all of such documents collectively.

(d) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation.

(e) The captions and headings of this Security Instrument are for convenience of reference only and shall not affect the construction of this Security Instrument.

### **3.2 Assignment of Rents.**

(a) Grantor hereby assigns to Grantee the Rents as further security for the payment of and performance of the Secured Obligations, and Grantor grants to Grantee the right to enter the Property for the purpose of collecting the same and to let the Property or any part thereof, and to apply the Rents on account of the Secured Obligations. The foregoing assignment and grant is present and absolute, is not an assignment for security only and shall continue in effect until the Secured Obligations are indefeasibly paid and performed in full, and Grantor shall be entitled to collect, receive, use and retain the Rents and to exercise all rights of the landlord under the Leases, including, without limitation, to commence and prosecute to completion

actions, arbitrations and proceedings with tenants and to sue for and to collect Rents, until the occurrence and during the continuance of an Event of Default; such right of Grantor to collect, receive, use and retain the Rents may be revoked by Grantee upon the occurrence and during the continuance of any Event of Default by giving not less than five (5) Business Days' written notice of such revocation to Grantor; in the event such notice is given, Grantor shall pay over to Grantee, or to any receiver appointed to collect the Rents, any lease security deposits, and shall pay monthly to Grantee, or to any such receiver, all Rents received for the use and occupancy of such part of the Property as may be in the possession of Grantor or any affiliate of Grantor, and upon default in any such payment Grantor and any such affiliate will vacate and surrender the possession of the Property to Grantee or to such receiver, and in default thereof may be evicted by summary proceedings or otherwise. Grantor shall not accept prepayments of installments of Rent to become due for a period of more than one month in advance (except for security deposits and estimated payments of escalation or percentage rent, if any).

(b) Grantor has not affirmatively done any act which would prevent Grantee from, or limit Grantee in, acting under any of the provisions of the foregoing assignment.

(c) Except for any matter disclosed in the Loan Agreement, no action has been brought or, so far as is known to Grantor, is threatened in writing, which would interfere in any way with the right of Grantor to execute the foregoing assignment and perform all of Grantor's obligations contained in this Section and in the Leases.

(d) Additional Rights. The holder of any subordinate lien or subordinate deed of trust on the Property shall, to the extent permitted by applicable law, have no right to terminate any Lease whether or not such Lease is subordinate to this Security Instrument nor shall Grantor consent to any holder of any subordinate lien or subordinate deed of trust joining any tenant under any Lease in any action to foreclose the lien or modify, interfere with, disturb or terminate the rights of any tenant under any Lease. By recordation of this Security Instrument all subordinate lienholders and the mortgagees and beneficiaries under subordinate mortgages are subject to and notified of this provision, and, to the extent permitted by applicable law, any action taken by any such lienholder or beneficiary contrary to this provision shall be null and void. Any such application shall not be construed to cure or waive any Unmatured Event of Default or Event of Default or invalidate any act taken by Grantee on account of such Unmatured Event of Default or Event of Default.

**3.3 Warranty.** Grantor represents and warrants to, and covenants and agrees with, Grantee as follows:

(a) Title. Grantor represents and warrants that Grantor lawfully possess and holds fee simple title to all of the Land and the Improvements. This Security Instrument, upon its due execution and proper recordation, is and will remain a valid and enforceable (and, with respect to all personalty as to which security interests are governed by the UCC, upon proper recordation and the filing of a financing statement) perfected first lien on and security interest in Grantor's right, title and interest in and to the Property. Grantor will preserve such title to the

Property and will forever warrant and defend same and the validity and priority of the lien hereof from and against any claims whatsoever.

(b) Enforceability of Security Instrument. This Security Instrument is the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity).

### **3.4 Affirmative Covenants.**

(a) Payment of Secured Obligations. Grantor agrees to promptly pay and perform all of the Secured Obligations, subject to and in accordance with the terms of the Loan Agreement and the other Loan Documents.

(b) Performance and Observance of Loan Agreement Covenants. Grantor will duly perform, observe and comply with all of the affirmative and negative covenants, agreements and obligations to be performed, observed and complied with by Grantor, and all of the other terms and conditions applicable to Grantor, under the terms of the Loan Agreement and any other Loan Document, as if each such covenant, agreement, obligation, term and condition were expressly set forth herein in full.

(c) Insurance. Grantor shall, at its sole cost and expense, continuously keep and maintain in force at all times all insurance in respect of the Property and Grantor's operations thereat, of the type and in the form and with insurers, all to the extent provided in, and subject to the terms of, Section 5.1 of the Loan Agreement or as may be otherwise required by Grantee in its reasonable judgment. All Proceeds to which Grantor may be entitled resulting from damage to or destruction of the Property or any part hereof by a casualty or a taking for public use, an action in eminent domain, or the exercise of the police power, whether by a condemnation proceeding or otherwise (such as by inverse condemnation), shall be distributed and applied towards repayment of the Secured Obligations in accordance with the provisions of the Loan Documents. At Grantee's request, Grantor shall provide Grantee with a counterpart original of any policy, together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. Each such policy of insurance shall be in an amount, for a term, and in form and content satisfactory to Grantee, and shall be written only by companies approved by Grantee. In addition, each policy of hazard insurance shall include a loss payable endorsement in favor of Grantee.

(d) Additions to Security. All right, title and interest of Grantor in and to all Improvements and Appurtenances hereafter constructed or placed on the Property and in and to any Personalty hereafter acquired shall, without any further deed of trust, conveyance, assignment or other act by Grantor, become subject to the lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the Granting Clauses hereof. Grantor agrees, however, to execute and deliver to

Grantee and/or Trustee such further documents as may be reasonably required by Grantee to subject such Improvements, additions, and after-acquired Personalty to the lien of this Security Instrument.

(e) Maintenance of Validity and Recording.

(i) Grantor covenants that it will pay or cause to be paid (A) prior to delinquency, all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it; (B) all taxes and fees incident to the filing, registration and recording of this Security Instrument and the other Loan Documents and any continuation statement or similar instrument relating to any property subject thereto or to any property intended to be encumbered, granted, conveyed, transferred and assigned by this Security Instrument to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the validity thereof or the grant thereby of the property subject thereto and the interest and rights of Grantee therein and (C) all reasonable expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes or other charges arising out of or in connection with the execution and delivery of such instruments.

(ii) Grantor shall not do any act to impair the validity, perfection, priority and effectiveness of this Security Instrument and the other Loan Documents. Unless otherwise permitted in this Security Instrument and the other Loan Documents, Grantor will not take any action, will not permit action to be taken by others and will not omit to take any action, nor will Grantor give any notice, approval or consent or exercise, which action, omission, notice, approval, consent or exercise, waiver or modification of rights would release Grantor from, or reduce any of Grantor's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, any of the Loan Documents, or would impair the validity of this Security Instrument or any of the other Loan Documents or have a Material Adverse Change, without Grantee's written consent, and any attempt to do any of the foregoing without such consent shall be of no force and effect.

(iii) Grantor, at its expense, will execute, acknowledge and deliver all such instruments and take all such actions as Grantee from time to time reasonably may request or as may be reasonably necessary or proper for the better assuring to Grantee of the properties and rights now or hereafter subject to the lien hereof or intended so to be

(f) Damages and Insurance and Condemnation Proceeds.

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

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

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

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

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

(ii) Grantor shall immediately notify Grantee in writing if:

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

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

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

(iii) All proceeds of the Claims assigned to Grantee under this Section shall be paid to Grantee. In each instance, Grantee shall apply those proceeds first toward reimbursement of all of Grantee's costs and expenses of recovering the proceeds, including attorneys' fees. Grantor further authorizes Grantee, at Grantee's option and in Grantee's sole discretion, and regardless of whether there is any impairment of the Property, (i) to apply the balance of such proceeds, or any portion of them, to pay or prepay some or all of the Secured Obligations in such order or proportion as Grantee may determine, or (ii) to hold the balance of such proceeds, or any portion of them, in an

interest-bearing account to be used for the cost of reconstruction, repair or alteration of the Property, or (iii) to release the balance of such proceeds, or any portion of them, to Grantor. If any proceeds are released to Grantor, Grantee shall not be obligated to see to, approve or supervise the proper application of such proceeds. If the proceeds are held by Grantee to be used to reimburse Grantor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition, or such other condition as Grantee may approve in writing. Notwithstanding anything to the contrary herein, Grantee hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property if (i) Grantee has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (ii) no Event of Default, or event that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists; provided, however, Grantee may, at Grantee's option, condition disbursement of the proceeds on Grantee's approval of such plans and specifications prepared by an architect satisfactory to Grantee, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage of completion of construction, application of payments, and satisfaction of liens as Grantee may reasonably require.

(g) **Transfer.** Grantor agrees that if any "Transfer" (as defined below) occurs without the prior written consent of Grantee, Grantee shall have the right at its option, without prior demand or notice, to declare all sums secured by this Security Instrument immediately due and payable. Grantee's consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. Grantee may grant or deny such consent in its sole discretion. "Transfer" shall mean (a) the sale, agreement to sell, transfer or conveyance of the Property, or any portion of or interest in the Property, including, without limitation, air rights and development rights, whether voluntary, involuntary, by operation of law or otherwise, or the lease of all or substantially all of the Property, but shall not include the conveyance of easements, licenses or leases reasonably necessary for the operation of the Improvements, or the repair or replacement of any personal property in the ordinary course of business; (b) any transfer by way of security, including the placing or permitting the placing on the Property of any mortgage, deed of trust, assignment of rents or other security device; and (c) if Grantor, or any person owning directly or indirectly through one or more entities any interest in Grantor (individually and collectively a "Principal"), is a partnership, limited liability company, joint venture, trust, closely-held corporation or other entity, the issuance, sale, conveyance, transfer, disposition or encumbering of any class of the currently issued and outstanding stock or other beneficial interests of Grantor or any Principal, or a change of any general partner or any joint venturer of Grantor or any Principal, either voluntarily, involuntarily, or otherwise. For purposes of this section, "closely-held corporation" shall mean any corporation not listed on a national or regional stock exchange.

**3.5 License to Collect Rents.** Grantee and Grantor hereby confirm that for so long as no Event of Default shall have occurred and is continuing, Grantee has granted to Grantor a revocable license to collect and use the Rents as they become due and payable in accordance with the provisions of the Loan Agreement. Grantor further agrees to execute and deliver such assignments of Leases and Rents as Grantee may from time to time reasonably request in order to better assure, transfer and confirm to Grantee the rights intended to be granted to Grantee with respect thereto. During the continuance of an Event of Default, Grantor agrees that, subject to applicable laws, Grantee may, but shall not be obligated to, assume the management of the Property, and collect the Rents, applying the same upon the Secured Obligations. During the continuance of an Event of Default, Grantee shall have and hereby expressly reserves the right and privilege (but assumes no obligation), to demand, collect, sue for, receive and recover the Rents, or any part thereof, now existing or hereafter made, and apply the same in accordance with this Security Instrument and applicable law.

**3.6 Security Agreement, Fixture Filing, and Financing Statement.** This Security Instrument constitutes a financing statement (fixture filing) and, to the extent required under the UCC because portions of the Property may constitute fixtures, this Security Instrument is to be filed in the office where a mortgage, open-end mortgage, deed to secure debt, or deed of trust for the Property would be recorded. Grantee also shall be entitled to proceed against all or portions of the Property in accordance with the rights and remedies available under the UCC. Grantor is, for the purposes of this Security Instrument, deemed to be the debtor, and Grantee is deemed to be the secured party, as those terms are defined and used in the UCC. Grantor agrees that the Indebtedness and Secured Obligations secured by this Security Instrument are further secured by security interests in all of Grantor's right, title and interest in and to fixtures, equipment, and other property covered by the UCC, if any, which are owned by Grantor, as more fully set forth herein or in the Loan Agreement. Grantor grants to Grantee a valid and effective first priority security interest in all of Grantor's right, title and interest in and to such personal property (but only to the extent permitted in the case of leased personal property), together with all replacements, additions, and proceeds. Grantor hereby authorizes Grantee to execute, deliver, file, or re-file as secured party without joinder of Grantor, any Financing Statement, Continuation Statement, or other instruments Grantee may reasonably require from time to time to perfect or renew such security interest under the UCC, including a financing statement which indicates the collateral as "all assets" of the Grantor or words to similar effect. Grantor agrees that, without the written consent of Grantee, no other security interest will be created under the provisions of the UCC with respect to any goods, fixtures, equipment, appliances, or articles of personal property now attached to or used or to be attached to or used in connection with the Property except as otherwise permitted hereunder or under the Loan Agreement. Grantor agrees that all property of every nature and description covered by the lien and charge of this Security Instrument together with all such property and interests covered by this security interest are encumbered as a unit, and during the continuance of an Event of Default by Grantor, all of the Property, at Grantee's option, may be foreclosed upon or sold in the same or different proceedings or at the same or different time, subject to the provisions of the Loan Agreement and applicable law. The filing of any financing statement relating to any such property or rights or



interests shall not be construed to diminish or alter any of Grantee's rights of priorities under this Security Instrument.

**3.7 Protection of Security; Costs and Expenses.** Subject to the terms of the Loan Agreement, Grantor shall appear in and defend any action or proceeding of which it has notice purporting to affect the security hereof or the rights or powers of Grantee.

**3.8 Remedies.** During the continuation of an Event of Default hereunder or under the Loan Agreement, Grantee (or Trustee, if required by applicable law) may, to the fullest extent permitted by law, take such actions against Grantor, subject to Section 3.10 hereof, and/or against the Property or any portion thereof as Grantee (or Trustee, if required by applicable law) reasonably determines is necessary to protect and enforce its rights hereunder, without notice or demand except as set forth below or as required under applicable law. Any such actions taken by Grantee (or Trustee, if required by applicable law) shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Grantee (or Trustee, if required by applicable law) may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Grantee (or Trustee, if required by applicable law) permitted by law, equity or contract or as set forth herein or in the other Loan Documents. No recovery of any judgment by Grantee and no levy of an execution under any judgment upon any other property of the Grantor or any portion thereof or upon any other property of Grantor shall adversely affect in any manner or to any extent the lien of this Security Instrument upon any other property of the Grantor or any portion thereof, or any rights, powers or remedies of Grantee hereunder, which lien, rights, powers and remedies shall continue unimpaired as before. Grantee's determination of appropriate action may be based on an appropriate real estate or other consultant and/or counsel, and Grantee may rely conclusively on such advice. Grantor shall pay such reasonable consultants' fees and reasonable attorneys' fees and expenses incurred by Grantee and/or Trustee pursuant to this Section 3.8. Such actions may include, without limitation, the following:

(a) [Reserved].

(b) Entry. During the continuance of an Event of Default, subject to the provisions and restrictions of applicable law and the rights of tenants, Grantee, personally, or by its agents or attorneys, at Grantee's election, may enter into and upon all or any part of the Property (including, but not limited to, the Land and the Improvements and any part thereof), and may exclude Grantor, its agents and servants therefrom (but such entry shall be subject to any non-disturbance agreements then in effect) and Grantee, having and holding the same, may use, operate, manage and control the Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receiver. Upon every such entry, Grantee may, at the reasonable expense of the Property and/or Grantor, from time to time, either by purchase, repair or construction, maintain and restore the Property or any part thereof, and may insure and reinsure the same in such amount and in such manner as may reasonably seem to them to be advisable. Similarly, from time to time, Grantee may, at the expense of Grantor (which amounts may be disbursed by Grantee from the Property on behalf of Grantor), make all necessary or proper repairs, renewals, replacements, alterations, additions,

betterments and improvements to and on the Property or any part thereof as it may reasonably deem advisable. Grantee or its designee shall also have the right to manage and operate the Property or any part thereof and to carry on the business thereof and exercise all rights and powers of Grantor with respect thereto, either in the name of Grantor or otherwise, as may seem to them to be advisable. Grantee shall be liable to account only for Rents and other proceeds actually received by Grantee, except in the case of gross negligence and misconduct.

(c) Foreclosure. During the continuance of any Event of Default, Grantee (or Trustee, if required by applicable law), with or without entry, personally or by its agents or attorneys, insofar as applicable, and in addition to any and every other remedy, shall have alternate remedies as follows:

(i) Power of Sale. To the extent and in the manner permitted by law, Grantee (or Trustee, if required by applicable law) may elect to exercise the non-judicial power of sale which is hereby conferred under the terms of this Security Instrument and with respect the Land as provided for by the statutes of the state in which such Land is located. With respect to the deed of trust states, if required by applicable law the power of sale shall be exercised by notifying Trustee hereunder of that election and depositing with Trustee this Security Instrument or the original Note and receipts and evidence of expenditures made and secured hereby as Trustee may reasonably require. Grantee (or Trustee, if required by applicable law) may, without further notice or demand, sell and convey the Property in accordance with applicable law. The Property may be sold as a whole or in separate lots, parcels or items and in such order as Grantee (or Trustee, if required by applicable law) may direct, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Grantee (or Trustee, if required by applicable law) shall deliver to such purchaser(s) good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty express or implied. The recitals in such deed of any matter or fact shall be conclusive proof of the truthfulness thereof. Any Person, including Grantor, Trustee, or Grantee, may purchase at any such sale. A sale of less than all of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein, and subsequent sales may be made hereunder until all Secured Obligations have been satisfied or the entire Property sold, without defect or irregularity. No action of Grantee or Trustee based upon the provisions contained herein or contained in the applicable statutes, including, without limitation, the giving of any required notice of default and election to sell or notice of sale, shall constitute an election of remedies which would preclude Grantee (or Trustee, if required by applicable law) from pursuing judicial foreclosure before a completed sale pursuant to the power of sale contained herein.

(ii) Judicial Foreclosure.

(A) Whether or not proceedings have commenced by the exercise of the power of sale above given, assuming the Event(s) of Default are uncured and continuing, then, subject to applicable law, Grantee or the holder or holders of any of the Secured Obligations, in lieu of proceeding with the power of sale, may at

its option declare the whole amount or any part, of the Secured Obligations remaining unpaid immediately due and payable without notice, by suit or suits in equity or at law to foreclose the same. Appraisal of the Property is hereby waived at the option of Grantee, that option to be exercised at or prior to the time judgment is rendered in the judicial foreclosure. The Property may be sold as one parcel or in such parcels as Grantee may elect unless otherwise provided by law. Grantee may be a purchaser of the Property or any part thereof or of any interest therein at any sale thereof, whether pursuant to power of sale, foreclosure or otherwise, and Grantee may apply the outstanding Secured Obligations against the purchase price. Any purchaser shall, upon its purchase, acquire good title to the properties so purchased, free of the security interest and lien of this Security Instrument.

(B) Grantee (or Trustee, if required by applicable law) may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Property remaining unsold, but shall continue unimpaired until the entire Property shall have been sold. Upon taking title to the Property (whether by foreclosure, deed in lieu or otherwise) by Grantee or any other purchaser or assignee of the Property after an Event of Default, Grantor shall assign and transfer all of its right, title and interest in and to the Property to Grantee. Grantor hereby irrevocably appoints Grantee (or Trustee, if required by applicable law) as its attorney-in-fact to execute all documents and take all actions necessary to effectuate such assignment and transfer, provided, that such power may only be exercised by Grantee while an Event of Default exists and is continuing.

(d) Specific Performance. Grantee, in its sole and absolute discretion, may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(e) [Reserved].

(f) Sale of Property.

(i) Grantee (or Trustee, if required by applicable law) may postpone any sale of all or any part of the Property to be made under or by virtue of this Section 3.8 by public announcement at the time and place of such sale, or by publication, if required by law, and, from time to time, thereafter, may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement.

(ii) Upon the completion of any sale made by Grantee (or Trustee, if required by applicable law) under or by virtue of this Section 3.8, Grantee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds

or other appropriate instruments, conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights so sold. Grantee (or Trustee, if required by applicable law) is hereby appointed the true and lawful irrevocable attorney-in-fact of Grantor in its name and stead or in the name of Grantee (or Trustee, if required by applicable law) to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and, for that purpose, Grantee may execute all necessary deeds and other instruments of assignment and transfer, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that such attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof; provided, however, that such power of attorney shall be effective only for so long as an Event of Default shall exist and be continuing. Grantor shall, nevertheless, if so requested in writing by Grantee (or Trustee, if required by applicable law), ratify and confirm any such sale or sales by executing and delivering to Grantee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Grantee, for such purposes and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 3.8 shall operate to divest all the estate, right, title, interest, claim and demand, whether at law or in equity, of Grantor in and to the property and rights so sold, and shall be a perpetual bar, at law and in equity, against Grantor, its successors and assigns and any Person claiming through or under Grantor and its successors and assigns.

(iii) The receipt of Grantee for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the property or rights, or any part thereof, so sold. No such purchaser, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Security Instrument, or shall be answerable, in any manner, for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of such sale.

(iv) Upon any sale made under or by virtue of this Section 3.8, Grantee may bid for and acquire the Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Note secured by this Security Instrument the net proceeds of sale, after deducting therefrom the expense of the sale and the costs of the action and any other sums which Grantee is authorized to deduct under this Security Instrument. The person making such sale shall accept such settlement without requiring the production of the Note or this Security Instrument, and there shall be deemed credited to the Indebtedness and Secured Obligations under this Security Instrument the net proceeds of such sale. Grantee, upon acquiring the Property or any part thereof, shall be entitled to own, hold, lease, rent, operate, manage or sell the same in any manner permitted by applicable laws.

(g) Voluntary Appearance; Receivers. During the continuance of any Event of Default hereunder or pursuant to the Loan Agreement, and promptly upon commencement of (i) any action, suit or other legal proceeding by Grantee (or Trustee, if required by applicable

law) to obtain judgment for the principal and interest on the Note and any other sums required to be paid pursuant to this Security Instrument, or (ii) any action, suit or other legal proceeding by Grantee or Trustee of any other nature in aid of the enforcement of the Loan Documents or any of them, Grantor will (x) enter its voluntary appearance in such action, suit or proceeding, and (y) if required by Grantee, consent to the appointment, of one or more receivers of the Property and all of the Rents. During the continuance of any Event of Default, or upon the filing of a bill in equity to foreclose this Security Instrument or to enforce the specific performance hereof or in aid thereof, or upon the commencement of any other judicial proceeding to enforce any right of Grantee or Trustee, Grantee (or Trustee, if required by applicable law) shall be entitled, as a matter of right, if it shall so elect, without notice to any other party and without regard to the adequacy of the security of the Property, forthwith, either before or after declaring the principal and interest on the Note to be due and payable, to the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as a court or courts shall confer, which may include, without limitation, any or all of the powers which Grantee or Trustee is authorized to exercise by the provisions of this Section 3.8, and shall have the right to incur such obligations and to issue such certificates therefor as the court shall authorize. Notwithstanding the foregoing, during the continuance of any Event of Default hereunder or pursuant to the Loan Agreement, Grantee (or Trustee, if required by applicable law) as a matter of right may appoint or secure the appointment of a receiver, trustee, liquidator or similar official of the Property or any portion thereof, and Grantor hereby irrevocably consents and agrees to such appointment, without notice to Grantor and without regard to the value of the Property or adequacy of the security for the Secured Obligations and without regard to the solvency of the Grantor or any other Person liable for the payment of the Secured Obligations, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Grantee (or Trustee, if required by applicable law) to receive the Rents pursuant to this Security Instrument or the Assignment of Leases.

(h) UCC Remedies. Grantee (or Trustee, if required by applicable law) may, as to the personal property described herein, exercise any or all of the remedies granted to a secured party under the UCC, specifically including, without limitation, the right to recover the reasonable attorneys' fees and disbursements and other expenses incurred by Grantee or Trustee in the enforcement of this Security Instrument or in connection with Grantor's redemption of the Improvements or building equipment or Intangibles. Grantee (or Trustee, if required by applicable law) may exercise its rights under this Security Instrument independently of any other collateral or guaranty that Grantor may have granted or provided to Grantee in order to secure payment and performance of the Secured Obligations, and Grantee shall be under no obligation or duty to foreclose or levy upon any other collateral given by Grantor to secure any Secured Obligations or to proceed against any guarantor before enforcing its rights under this Security Instrument.

(i) Leases. Grantee may, at its option, before any proceeding for the foreclosure (or partial foreclosure) or enforcement of this Security Instrument, treat any Lease

which is subordinate by its terms to the lien of this Security Instrument (and with respect to which a non-disturbance agreement exists and is in full force and effect without any default on the part of the tenant thereunder or under the Lease relating thereto beyond the expiration of applicable notice and cure periods), as either subordinate or superior to the lien of this Security Instrument, but at all times subject to such non-disturbance agreement, if applicable.

(j) Other Rights. Grantee (or Trustee, if required by applicable law) may pursue against Grantor any other rights and remedies of Grantee permitted by law, equity or contract or as set forth herein or in the other Loan Documents, subject to the provisions of the Loan Agreement.

(k) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Grantor, or any of its property, or of the Property or any part thereof, Grantee or Trustee, to the extent permitted by law, shall be entitled to retain possession and control of all property now or hereafter granted to or held by Grantee or Trustee under this Security Instrument.

(l) Suits by Grantee. To the extent permitted by applicable law, all rights of action under this Security Instrument may be enforced by Grantee without the possession of the Note and without the production thereof or this Security Instrument at any trial or other proceeding relative thereto, provided, however, that Grantee shall in any event be, and shall certify that it is, the current holder of the Note. Any such suit or proceeding instituted by Grantee shall be brought in the name of Grantee and any recovery of judgment shall be subject to the rights of Grantee.

(m) Remedies Cumulative. Subject to the Loan Agreement, no remedy herein (or pursuant to the Loan Agreement or any Loan Document) conferred upon or reserved to Grantee or Trustee shall exclude any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission of Grantee or Trustee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given to Grantee or Trustee by this Security Instrument or any other Loan Document may be exercised from time to time and as often as Grantee may deem expedient. Nothing in this Security Instrument shall affect Grantor's obligations to pay the principal of, and interest on, the Note in the manner and at the time and place expressed in the Note.

(n) Waiver of Rights. Grantor agrees that, to the fullest extent permitted by law, it will not at any time: (i) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Security Instrument or any Loan Document, (ii) claim, take or insist upon any benefit or advantage of any law, now or at any time hereafter in force, providing for valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (iii) after any

such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States or any State or otherwise to redeem the property and rights sold pursuant to such sale or sales or any part thereof. Grantor hereby expressly waives all benefits and advantages of such laws, and covenants, to the fullest extent permitted by law, not to hinder, delay or impede the execution of any power herein granted or delegated to Grantee, but will suffer and permit the execution of every power as though no such laws had been made or enacted. Grantor for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights and, any and all rights to reinstatement, any and all right to have the property comprising the Property marshaled upon any foreclosure of the lien hereof.

**3.9 Application of Proceeds.** Unless otherwise provided by applicable law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in Section 3.8 above, and any other proceeds received by Grantee from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied in accordance with the Loan Agreement.

**3.10 Miscellaneous.**

(a) CERTAIN WAIVERS. TO INDUCE GRANTEE TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE NOTE AND THIS SECURITY INSTRUMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, GRANTOR EXPRESSLY AND IRREVOCABLY HEREBY, IN ADDITION TO AND NOT IN DEROGATION OF ALL OTHER WAIVERS CONTAINED IN THE NOTE, THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS, WAIVES AND SHALL WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY, OR COUNTERCLAIM ASSERTED BY GRANTEE WHICH ACTION, PROCEEDING OR COUNTERCLAIM ARISES OUT OF OR IS CONNECTED WITH THIS SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT.

(b) Notices. All notices, consents, approvals, and requests (each a "Notice") required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered in accordance with in Section 8 of the Loan Agreement; provided, that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. This Section 3.10 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Security Instrument or in any other Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, request, or demand sent.

(c) No Oral Modification. This Security Instrument may not be waived, altered, amended, modified, changed, discharged or terminated orally but only by a written agreement signed by the party against which enforcement is sought.

(d) Partial Invalidity. In the event any one or more of the provisions contained in this Security Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included hereunder.

(e) Successors and Assigns. All covenants of Grantor contained in this Security Instrument are imposed solely and exclusively for the benefit of Grantee and its successors and assigns, and no other Person shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Grantee at any time if in its sole discretion it deems it advisable to do so. All such covenants of Grantor shall run with the land and bind Grantor, the successors and assigns of Grantor (and each of them) and all subsequent owners, encumbrances and tenants of the Property, and shall inure to the benefit of Grantee, its successors and assigns.

(f) GOVERNING LAW. THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA.

(g) No Waiver. No failure by Grantee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such term or right, power or remedy or of any such breach. No waiver of any breach shall affect or alter this Security Instrument, which shall continue in full force and effect, or shall affect or alter the rights of Grantee with respect to any other then existing or subsequent breach.

(h) Further Assurances. Grantor, at its own expense, will execute, acknowledge and deliver all such reasonable further documents or instruments including, without limitation, (i) security agreements on any building equipment included or to be included in the Property, and (ii) such other documents as Grantee from time to time may reasonably request to better assure, transfer and confirm unto Grantee the rights now or hereafter intended to be granted to Grantee under this Security Instrument or the other Loan Documents. Grantor shall notify Grantee in writing no less than thirty (30) days prior to a change of address.

(i) Merger, Conversion, Consolidation or Succession to Business of Grantee. Any person into which Grantee may be merged or converted or with which it may be consolidated, or any person resulting from any merger, conversion or consolidation to which Grantee shall be a party, or any person succeeding to all or substantially all the business of Grantee, shall be the successor of Grantee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.



(j) No Endorsement. Grantee shall not become or be considered to be an endorser, co-maker or co-obligor on the Note or on any other Secured Obligation of Grantor secured by this Security Instrument or otherwise.

(k) Multistate Real Estate Transaction. Grantor agrees that the lien of this Security Instrument with respect to the Property shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Grantee and, without limiting the generality of the foregoing, the lien hereof with respect to the Property shall not be impaired by any acceptance by Grantee of any security for or guarantee upon any of the Secured Obligations or by any failure, neglect or omission on the part of Grantee to realize upon or protect any of the Secured Obligations or any collateral security therefor with respect to any other property of the Grantor. The lien hereof with respect to the Property 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 any disposition of any of the Secured Obligations or any of the collateral security therefor, with respect to any other property of the Grantor or any guarantee therefor. To the extent not prohibited by applicable law, Grantee may, at its discretion, foreclose, exercise any power of sale, or exercise any other remedy available to it under with respect to any other property of the Grantor without first exercising or enforcing any of its rights and remedies with respect to any other property of the Grantor. To the extent not prohibited by applicable law, such exercise of Grantee's rights and remedies with respect to any other property of the Grantor shall not in any manner impair the Secured Obligations or the lien of this Security Instrument with respect to any other property of the Grantor. Grantor specifically consents and agrees that Grantee may exercise its rights and remedies hereunder with respect to any other property of the Grantor separately or concurrently and in any order that it may deem appropriate

(l) Entire Agreement. THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL WRITTEN AGREEMENT BETWEEN THE PARTIES AND 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.

(m) Satisfaction. Payment in full of the Indebtedness and termination of any commitment to make advances pursuant to the Loan Documents shall render this Security Instrument automatically terminated with respect to the Property or portion thereof described in any satisfaction or release. A written instrument evidencing satisfaction in full of the Security Instrument, duly executed by Grantee, shall be conclusive evidence of such termination; provided, however, that any such instrument evidencing satisfaction shall be prepared and recorded at the sole expense of Grantor. Without limiting the foregoing, Grantor agrees that Grantee may take or release any security for the payment of the Indebtedness secured by the Security Instrument, may release any party primarily or secondarily liable therefor, and may apply any security held by it to the satisfaction of the Indebtedness secured by the Security Instrument without prejudice to any of its rights under this Security Instrument.

### 3.11 Trustee.

(a) Substitute or Successor Trustee. Trustee may resign by an instrument in writing addressed to Grantee, or Trustee may be removed at any time with or without cause by Grantee. In case of death, resignation, removal or disqualification of Trustee or if for any reason Grantee shall deem it desirable to appoint a substitute or successor Trustee to act instead of the herein named Trustee or any substitute or successor Trustee, then Grantee shall have the right and is hereby authorized and empowered to appoint a successor Trustee, or a substitute Trustee, without other formality than appointment and designation in writing executed and acknowledged by Grantee and, if required by applicable law to provide constructive notice, recorded in the county or counties where the Property is located, and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the indebtedness secured hereby has been paid in full or until the Property is sold hereunder. In the event the indebtedness secured hereby is owned by more than one person or entity, the holder or holders of not less than a majority in the amount of such indebtedness shall have the right and authority to make the appointment of a successor or substitute Trustee provided for in the preceding sentence. Such appointment and designation by Grantee shall be full evidence of the right and authority to make the same and of all facts therein recited. If Grantee is a corporation or a nationally chartered bank and such appointment is executed in its behalf by an officer of such corporation or nationally chartered bank, 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. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute Trustee and such successor or substitute shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee; but nevertheless, upon the written request of Grantee or of the successor or substitute Trustee, Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute Trustee all of the estate and title in the Property of Trustee so ceasing to act, together with all rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver any of the property and monies held by said Trustee hereunder to said successor or substitute 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. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

(b) Liability of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or willful misconduct as determined by a final non-appealable judgement by a court of competent jurisdiction. 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 monies 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 all other

monies, and Trustee shall be under no liability for interest on any monies received by it hereunder. Grantor will reimburse Trustee for, and indemnify and save Trustee harmless against, any and all liability and expenses which may be incurred by it in the performance of his duties hereunder, except for any liability or expense incurred due to Trustee's gross negligence or willful misconduct as determined by a final non-appealable judgement by a court of competent jurisdiction.

(c) Grantee and Trustee. Trustee accepts the trusts hereby created and agrees to perform the duties herein required of it upon the terms and conditions hereof. The duties and obligations of Trustee in respect of this Security Instrument shall be as set forth in this Section 3.11, including and subject to the following:

(i) Except during the continuance of an Event of Default that is actually known to Grantee:

(A) Trustee shall undertake to perform such duties and obligations and only such duties and obligations as are specifically set forth in this Security Instrument and the other Loan Documents or as otherwise directed by a letter of direction from Grantee, and no implied covenants or obligations shall be read into this Security Instrument or the other Loan Documents against Trustee; and

(B) in the absence of bad faith, Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to Trustee and conforming to the requirements of this Security Instrument and the other Loan Documents, but in the case of any such certificates or opinions which by any provision hereof or thereof are specifically required to be furnished to Grantee, Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Security Instrument and the other Loan Documents.

(ii) Trustee shall exercise the rights and powers vested in Trustee by this Security Instrument and the other Loan Documents with reasonable care.

(iii) No provision of this Security Instrument shall be construed to relieve Trustee from liability for its own gross negligence or willful misconduct (as determined by a final non-appealable judgement by a court of competent jurisdiction), including that of its directors, officers, agents and employees, except that:

(A) Trustee shall not be liable for any error of judgment made in good faith by Trustee, unless it shall be proved that Trustee was negligent in ascertaining the pertinent facts; and

(B) Trustee shall not be liable with respect to any action taken or omitted to be taken in good faith in accordance with the direction of Grantee relating to the time, method and place of conducting any proceeding for any

remedy available to Trustee, or exercising any trust or power conferred upon Trustee under this Security Instrument.

(iv) Whether or not therein expressly so provided, every provision of this Security Instrument and the other Loan Documents relating to the conduct or affecting the liability of or affording protection to Trustee shall be subject to the provisions of this Section 3.11.

(v) No provision of this Security Instrument shall require Trustee to expend or risk his own funds or otherwise incur any personal financial liability in the performance of any of his duties hereunder, or in the exercise of any of his rights or powers, if Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Covenants of Grantor. Grantor hereby covenants and agrees with Trustee and Grantee, subject to the terms of the Loan Agreement: (i) to pay to Trustee from time to time reasonable compensation for all services rendered by Trustee hereunder; (ii) to reimburse Trustee upon request for all reasonable expenses, disbursements and advances actually incurred or made by it in accordance with any provision of this Security Instrument (including reasonable compensation, expenses and disbursements of agents and counsel), except any such expense, disbursement or advance (x) specifically stated in the Loan Agreement to be payable by Grantee or to be without cost to Grantor, or (y) attributable to the gross negligence or willful misconduct of Trustee as determined by a final non-appealable judgement by a court of competent jurisdiction; and (iii) to indemnify Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence or willful misconduct (as determined by a final non-appealable judgement by a court of competent jurisdiction) on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder or the enforcement of remedies hereunder including the costs and expenses of defending against any claim or liability in connection with the exercise or performance of any of the powers or duties hereunder or thereunder (except any liability incurred by Trustee which is attributable to its or the Grantee's gross negligence or willful misconduct as determined by a final non-appealable judgement by a court of competent jurisdiction).

(e) Survival of Grantor Obligations. The obligations of Grantor under this Section 3.11 to compensate or indemnify Grantee and/or Trustee and to pay or reimburse the same for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Security Instrument. When Trustee incurs expenses or renders services after an occurrence of an Event of Default, such expenses and compensation shall constitute expenses of administration under any applicable bankruptcy law.

(f) Co-Trustees and Additional Trustees. At any time or times, (i) for the purpose of complying with the applicable laws of any jurisdiction in which any part of the Property may at the time be located, or (ii) if Grantee deems it to be necessary or desirable for the protection of its interests, Grantee shall have the power to appoint, and upon written request

of Grantee, Grantor shall for such purpose join with Grantee in the execution, delivery and performance of all instruments and agreements reasonably necessary or proper to appoint, one or more Persons approved by Grantee either to act as co-Trustee, jointly with Trustee and/or Grantee, of all or any part of the Property, or to act as separate Trustee of any such property, in either case with such powers as may be provided in the instrument of appointment which shall expressly designate the property affected and the capacity of the appointee as either a co-Trustee or separate Trustee, and to vest in such person or persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 3.11. If Grantor does not join in such appointment within fifteen (15) days after the receipt by it of a request so to do, or if an Event of Default shall have occurred and be continuing, Grantee alone shall be entitled to make such appointment without further reference to Grantor. Should any written instrument from Grantor be required by any co-Trustee or separate Trustee so appointed for more fully confirming to such co-Trustee or separate Trustee such property, title, right or power, any and all such instruments shall be executed, acknowledged and delivered by Grantor upon request by Grantee. If Grantor does not execute and deliver such instrument within five (5) Business Days after the receipt by it of a request so to do, or if an Event of Default shall have occurred and be continuing, Grantee is hereby appointed Grantor's attorney-in-fact and shall be entitled to execute and deliver such instrument for and on behalf of Grantor and in the name of Grantor. Every co-Trustee or separate Trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the same terms as hereinabove set forth for Trustee.

#### ARTICLE IV. STATE LAW PROVISIONS

**4.1 Utah Law Provisions.** Notwithstanding anything to the contrary elsewhere in this Security Instrument, with respect to any Property located in the State of Utah:

(a) FINAL AGREEMENT. PURSUANT TO UTAH CODE ANN. § 25-5-4, GRANTOR IS NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(b) Financing Statements. Any initial financing statements and amendments thereto filed pursuant to this Security Instrument may (a) describe the Personalty: (i) as all assets of Grantor or words of similar effect, regardless of whether any particular asset comprised in the Personalty falls within the scope of Article 9a of the Uniform Commercial Code of the State of Utah, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor. Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with

respect to any financing statement without the prior written consent of Grantee and agrees that it will not do so without the prior written consent of Grantor, subject to Grantor's rights under Section 9a-509 of the Utah Uniform Commercial Code.

(c) Water Rights.

- a. Grantor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Utah, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Grantor or all or any portion of the real property subject to this Security Instrument.
- b. Grantor shall diligently place to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Grantor cannot place any quantity of water under the Water Rights to a beneficial use, Grantor shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.
- c. Grantor shall promptly provide Grantee with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.
- d. Grantor shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide Grantee with evidence of each such payment.
- e. Grantor and its predecessors in interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.
- f. As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Security Instrument, means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or

unappropriated water pertaining to, appurtenant to or used with respect to the Land, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Grantor; subject to the assignment to Grantee set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the State Engineer's approval of any application filed by Grantor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Grantor now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

(d) Section 3.8 of the Security Instrument is amended as necessary to be consistent with the following provisions relating to nonjudicial foreclosure of the Property:

- a. Grantee may invoke the power of sale by recording and otherwise giving all written notices required by law to Trustee of an event of default and Grantee's election to cause the Property to be sold. Trustee shall record a Notice of Default and Election to Sell with the Office of the County Recorder of Davis County, Utah. Grantee shall deposit with Trustee this Security Instrument and such additional instruments and documents as Trustee may require under applicable law. Trustee shall publish and post a notice for sale for the time and in the manner provided by applicable law and shall mail copies of the notice of sale in the manner prescribed by applicable law to Grantor and to other persons prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Grantor, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines (but subject to

Borrower's statutory right under Utah Code Annotated Section 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold). Trustee may postpone the sale of any parcel of the Property by public announcement at the time and place of any previously scheduled sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-27. Trustee shall apply the proceeds of the sale as follows:

*First:* To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed.

*Second:* To payment of the obligations secured by this Deed of Trust.

*Third:* The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

- b. Any person, including Grantor or Grantee, or its designee, may purchase the Property at the sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a Trustee's deed, in accordance with Utah Code Ann. § 57-1-28, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.
- c. Upon any sale made under or by virtue of this subsection, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Grantee may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with Utah Code Ann. § 57-1-28(1)(b). In the event of a successful credit bid, Grantee shall make settlement for the purchase price by crediting upon the obligations of Grantor secured by this Security Instrument such credit bid amount. Grantee, upon so acquiring the



Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

- d. For purposes of Utah Code Ann. § 57-1-28, Grantor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other loan documents shall constitute a part of and be entitled to the benefits of Grantee's Security Instrument lien upon the Property, and (ii) Grantor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Grantee may include all such amounts in any credit which Grantee may make against its bid at a foreclosure sale of the Property pursuant to this Security Instrument.
- e. Grantor agrees to pay any deficiency arising from any cause, to which Grantee may be entitled after applications of the proceeds of any trustee's sale, and Grantee may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other applicable law. Grantor agrees for purposes of Utah Code Ann. § 57-1-32 that the value of the Property as determined and set forth in an FIRREA appraisal of the Property as obtained by Grantee on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of Utah Code Ann. § 57-1-32.
- f. If Grantor, Grantor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Grantee the reasonable cancellation fee contemplated by Utah Code Ann. § 57-1-31(2), as delivered by Grantee, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.
- g. Grantor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Grantor under Utah Code Ann. § 78B-6-901 (formerly Utah Code Ann. § 78-37-1) and Utah Code Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

- h. In the event of any amendment to the provisions of Utah Code Annotated Title 57 or other provisions of Utah Code Annotated referenced in this Security Instrument, this Security Instrument shall, at the sole election of Grantee, be deemed amended to be consistent with such amendments or Grantee may elect not to give effect to such deemed amendments hereto if permitted by applicable law.
- i. Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, trustee's fees and attorneys' fees actually incurred not to exceed the amount which may be provided for in the Security Instrument; (ii) to all sums secured by this Security Instrument; and (iii) any excess to the persons or persons legally entitled to it, or Trustee, in Trustee's discretion, may deposit any excess with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Ann. § 57-1-29 or any successor provision of law.

(e) In addition to the rights set forth elsewhere in this Security Instrument, during the continuation of an Event of Default hereunder or under the Loan Agreement, grantee shall have the right to appoint a receiver in accordance with the Utah Uniform Commercial Real Estate Receivership Act.

(f) The following is added to Section 3.8(h) of the Security Instrument: In addition, it is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Grantee, upon an Event of Default, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Security Instrument and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Ann. § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Ann. § 57-1-30 or other applicable law.

(g) Grantor acknowledges that the stated purpose for which this Security Instrument is given is to finance, refinance or construct residential rental property. Accordingly, to permit Grantee to comply with Utah Code Ann. § 57-1-25 and other applicable law, Grantor agrees that promptly upon Grantee's request, it will provide to a Grantee a written summary of the number of dwelling units within the improvements by unit or apartment number and the mailing address for each such unit or apartment. Grantor agrees to promptly update such written summary and provide the same to Grantee from time to time upon request from Grantee. To further allow Grantee to comply with Utah Code Ann. § 57-1-25 and other applicable law, Grantor agrees to provide a written roll, copies of all tenant leases, a summary list of tenants and addresses by unit or

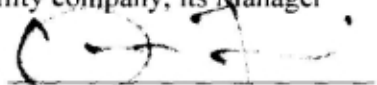
apartment number at least every six months and more frequently at any time upon the request of Grantee.

(h) Grantee's rights are subject to the Utah "one action rule" (Utah Code Annotated § 78B-6-901, and interpretive case law). Grantee's ability to enforce an assignment of rent provision in the Loan Documents is governed by the Utah Uniform Assignment of Rents Act, Utah Code Annotated § 57-26-101, et seq.

(i) Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. In no event shall Borrower be required to pay to Trustee any fees or compensation in excess of amounts permitted by Utah Code Annotated § 57-1-21.5.

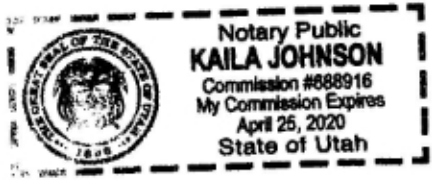
[Remainder of page intentionally blank; signature page follows.]


IN WITNESS WHEREOF, the undersigned, pursuant to proper authority of its operating agreement and/or bylaws, has duly executed, sealed, acknowledged and delivered this Security Instrument as of the day and year first above written.

<p><b>NOTICE OF INDEMNIFICATION:</b>  <b>GRANTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS SECURITY INSTRUMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN CLAUSES (b) THROUGH (e) OF SECTION 3.11 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY GRANTOR OF GRANTEE FROM CLAIMS OR LOSSES ARISING IN STRICT LIABILITY OR AS A RESULT OF GRANTEE'S OWN NEGLIGENCE.</b></p>	<p><b>GRANTOR:</b>  <b>JF FOXBORO PARTNERS, LLC</b>, a Utah limited liability company   By: J. Fisher Companies, LLC, a Utah limited liability company, its Manager   By:   Owen J. Fisher, Manager   <b>Grantor's Organizational ID:</b> _____   <b>Grantor's Address:</b>  JF Foxboro Partners, LLC  c/o JF Capital  1148 Legacy Crossing Boulevard  Centerville, Utah 84014  Attention: Owen Fisher</p>
--	--

STATE OF UTAH )  
 ) SS.  
COUNTY OF DAVIS )

On the 27<sup>th</sup> day of <sup>Feb</sup>~~March~~, 2020, personally appeared before me Owen J. Fisher, who acknowledged himself to be the Manager of J. Fisher Companies, LLC, a Utah limited liability company, Manager of JF FOXBORO PARTNERS, LLC, a Utah limited liability company, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.



  
Notary Public  
Printed Name: Kaila Johnson  
My Commission Expires: 4.25.2020

**EXHIBIT A  
PROPERTY DESCRIPTION**

PARCEL 1:

Lot 106A, FOXBORO PLAT 1A AMENDED, according to the official plat thereof on file and of record in the Davis County Recorder's office, recorded November 4, 2003 as Entry No. 1929395 in Book 3410 at Page 950.

PARCEL 2:

Lot 107A, FOXBORO PLAT 1A AMENDED, according to the official plat thereof on file and of record in the Davis County Recorder's office, recorded November 4, 2003 as Entry No. 1929395 in Book 3410 at Page 950.

Tax Id No.: 01-305-0106 and 01-305-0107