

108784-DT

This Instrument Prepared By

And After Recording Return To:

Erica D. Howard

Counsel – Real Estate

RGA Reinsurance Company

c/o RGA Mortgage Loan Servicing

P.O. Box 771320

St. Louis, Missouri 63177

APN: 15-038-0-0001

13-073-0-0004

13-098-0-0000

13-073-0-0005

16-033-0-0001

15-038-0-0001

**DEED OF TRUST, SECURITY AGREEMENT**

**AND FIXTURE FILING**

(Utah)

(Loan No. 73100965)

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (“Deed of Trust”) made this 20<sup>th</sup> day of February, 2019, by **CCA-TOOELE TOWNE CENTER, LLC**, a Delaware limited liability company, whose address is 5670 Wilshire Blvd., Suite 1250, Los Angeles, California 90036 (the “Trustor”), to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, whose address is 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121 (the “Trustee”), for the benefit of **RGA REINSURANCE COMPANY**, a Missouri corporation, (the “Beneficiary”), whose address is c/o RGA Mortgage Loan Servicing, P.O. Box 771320, St. Louis, Missouri 63177.

WITNESSETH

WHEREAS, Trustor is indebted to Beneficiary in the sum of ELEVEN MILLION AND NO/100 DOLLARS (\$11,000,000.00) in lawful money of the United States (such indebtedness being hereafter referred to as the “Loan”), and has agreed to repay to Beneficiary, or to its order, said sum with interest thereon at the rate of five and 10/100 percent (5.10%) per annum according to the terms of that certain promissory note of even date herewith, maturing March 1, 2029, and which has been executed and delivered by Trustor to Beneficiary (the “Note”).

WHEREAS, Beneficiary, as a condition precedent to the extension of credit and the making of the Loan has required that Trustor provide Beneficiary with security for the repayment of the Loan as well as for the performance, observance and discharge by Trustor of various terms, covenants, conditions and agreements made by Trustor to, with, in favor of and for the

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benefit of Beneficiary with respect to the indebtedness evidenced by the Note and as provided in any and all other documents and agreements entered into in connection with and as security for the Note (collectively the "Loan Documents").

NOW, THEREFORE, Trustor, in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid, the receipt whereof is hereby acknowledged, and the further consideration, uses, purposes and trusts herein set forth and declared, has granted, bargained sold and conveyed, and by these presents does hereby grant, bargain, sell and convey unto said Trustee, its successors and assigns, for the benefit of Beneficiary, with power of sale, IN TRUST, FOREVER, all of the following described property known and numbered as 972 North Main Street, 48 East 1000 North, 42 East 1000 North, 990 North Main Street and 960 North Main Street, with all buildings and improvements thereon and hereafter placed thereon, situated in the City of Tooele, County of Tooele, and State of Utah, and being more particularly described on Exhibit A attached hereto and incorporated herein by reference.

Together with all easements, rights of way, gores of real estate, streets ways, alleys, passages, Water Rights (as hereinafter defined), and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances to the above described property belonging, or in anywise appertaining, including any after-acquired title, franchises, minerals, licenses or easements, and also together with all right, title and interest of Trustor, from time to time, in and to any and all buildings, and all rents, issues and profits thereof, real estate fixtures, equipment and improvements, thereon or which may hereafter be placed thereon or attached thereto, including, but not limited to, any equity which may be acquired by Trustor in any such fixtures or equipment as a result of the making of installment payments on account of the purchase of the same, and all the interior improvements and fixtures, movable or immovable of every kind and description in and upon said property or which may hereafter be placed in or upon the same or used in connection therewith, all of which property, together with any and all additions thereto and replacements thereof, shall be deemed to be fixtures and an accession to the freehold, and a part of the realty as between the parties hereto to the extent owned by Trustor and expressly excluding such property owned by a tenant, and all persons claiming by, through or under them, and shall be deemed a portion of the security for the indebtedness evidenced by the Note and secured by this Deed of Trust and shall hereafter be referred to as the "Real Estate," the specific enumerations herein are not to be construed as limiting the general. As used herein, "Water Rights" means all sewer rights, waters, water courses, water rights and powers belonging and/or appertaining to the property described in Exhibit A hereto.

AND Trustor does hereby irrevocably grant and convey unto Beneficiary a continuing security interest in all of Trustor's right, title and interest in and to each of the following, whether now owned or in existence or hereafter acquired or arising: (i) machinery, equipment, fixtures, fittings, appliances, furniture and articles of real, personal or mixed property of every kind and nature whatsoever used or usable in the operation of or related to the Real Estate, including, but not limited to, and to the extent not classified as real estate fixtures for purposes of the definition of Real Estate set forth above, all heating, ventilating, air conditioning, plumbing and lighting

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systems and equipment, ranges, refrigerators, dishwashers, food and beverage appliances, shades, drapes, mirrors, carpeting, linoleum, tables, chairs, beds, dressers, sofas, sprinkling systems, fire prevention and/or fire-extinguishing apparatus, all electrical and communications systems and equipment, and all cleaning, laundry, lawn and other maintenance systems and equipment; (ii) all accounts, contract rights, general intangibles, payment intangibles, instruments, documents, chattel paper, accounts receivables, supporting obligations, deposits, fees, charges and other payments, income, and cash receipts relating to the Real Estate; (iii) all substitutes and replacements for, accessories, accessions, attachments, and other additions to, and all raw materials, supplies, work in process, tools, parts, and equipment of any nature and description used or which might be used in connection with any of the foregoing; (iv) all products and proceeds of any of the foregoing, including, without limitation, all payments under any insurance policies and any indemnity, warranty or guaranty relating to any of the foregoing; (v) any management agreements, and related agreements and documents, and all general intangibles and other rights arising from or in connection with all such agreements (including any rights of first refusal, options to purchase or similar rights, and any right of first refusal arising under applicable bankruptcy law), and all products and proceeds thereof and additions thereto; (vi) all of Trustor's books and records pertaining to the Real Estate and/or any of the foregoing, including computer-readable memory and any computer hardware or software necessary to access and process such memory; and (vii) all other personal property which Trustor may now own or hereinafter acquire, wherever located, used or usable in the operation of or relating to the Real Estate (all of said property being hereafter referred to as the "Personal Property"; all of the Real Estate and all of the Personal Property shall be hereafter referred to collectively as the "Property").

TO HAVE AND TO HOLD THE PROPERTY IN TRUST, WITH THE POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the purpose of securing (a) the payment of the above described Note and indebtedness and/or any modifications, extensions or renewals thereof, (b) the payment by Trustor to Beneficiary, as herein provided, of all sums expended or advanced by Beneficiary pursuant to any term or provision hereof, and (c) the performance of each stipulation, condition, covenant and agreement of Trustor herein contained or as provided in any of the other Loan Documents. For purposes of *Utah Code Annotated* Section 57-1-28, Trustor agrees that all default interest, late charges, swap obligations and similar amounts, if any, owing from time to time under the Note, this Deed of Trust, or any other Loan Document shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Property and Beneficiary may add all such amounts to the principal balance of the Note, in its sole discretion, and Beneficiary may include such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust. This Deed of Trust shall also constitute a security agreement and fixture filing, as those terms are defined in the Uniform Commercial Code of the State of Utah and of any other state(s) in which the Personal Property and/or Trustor is located (as such Uniform Commercial Code now or hereafter exists, the "UCC"), and since some of the property is or is to become fixtures on the Real Estate, this Deed of Trust shall also be effective as a financing statement (as contemplated by *Utah Code Annotated* Section 70A-9a-502) filed as a fixture filing with respect to all fixtures

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included in the Property, executed by Trustor (as "debtor") in favor of Beneficiary (as "secured party"); information relating to the security interest created hereby may be obtained from Beneficiary, the secured party hereunder, at the address of Beneficiary set forth above.

AND WHEREAS TRUSTOR EXPRESSLY COVENANTS AND AGREES WITH BENEFICIARY AS FOLLOWS:

1. To pay promptly all and singular the principal and interest, and other sums of money payable by virtue of said Note and under the terms and conditions of this Deed of Trust, on the days respectively that the same severally become due, and to perform each and every stipulation, agreement, covenant, and condition in said Note and this Deed of Trust and security agreement contained in each case subject to any applicable notice and cure periods.

2. (i) To properly care for and keep said Property in good condition and repair; (ii) not to remove or demolish or, permit the removal or demolition of any building or improvement thereon; (iii) to complete in a good and workmanlike manner any building which may be constructed thereon and to pay when due all claims for labor performed and materials furnished therefor; (iv) to comply with all laws, ordinances and regulations governing the use of said Property; (v) to allow Beneficiary to inspect the Property at any reasonable time and upon prior notice to Trustor; (vi) not to commit or knowingly permit any waste or deterioration thereof; (vii) to do any other act or acts, all in a timely and proper manner, which, from the character or use of said Property, may be reasonably necessary to protect and preserve said Property; (viii) to do any and all acts all in a timely and proper manner, reasonably requested by Beneficiary to protect and preserve the security interests granted hereunder including, without limitation, the authentication, execution, communication and delivery of one or more financing statements and continuation statements pursuant to the Uniform Commercial Code of the State(s) where the Property and/or Trustor is located (as such Code now or hereafter exists), in a form satisfactory to Beneficiary, and the payment of the cost of filing said statements in all public offices requested by Beneficiary; and (ix) to do any and all acts as shall hereafter be reasonably requested by Beneficiary to effectuate the intent hereof and to render all of the Property available for the security and satisfaction of the indebtedness secured hereby and to enable Trustee or Beneficiary to sell and/or convey the Property pursuant to the terms hereof. Trustor expressly authorizes Beneficiary to file and/or record one or more financing statements and continuation statements in jurisdictions deemed appropriate by Beneficiary in its reasonable judgment in order to create, perfect and preserve the security interest of Beneficiary in the Personal Property and fixtures. Trustor hereby agrees that such financing statements filed by Beneficiary may describe the Personal Property in any way Trustor may determine appropriate, including, without limitation, as "all assets" of Trustor or words of similar effect.

3. A. Trustor shall keep the buildings and other insurable Property now or hereafter erected or otherwise placed in or on said Real Estate, insured as may be required from time to time by Beneficiary, against loss or damage by fire and windstorm, and to carry any other kinds of insurance in amounts and for periods as from time to time may be required by Beneficiary, all

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such insurance to be in forms and in sums (not less than sufficient to avoid any claim on the part of the insurers for co-insurance) reasonably satisfactory to Beneficiary, including, but not limited to the following:

- i. "Open Perils," "Special Form," or "Special Perils" property insurance coverage in an amount not less than one hundred percent (100%) of the replacement cost of all insurable elements of the Real Estate and of all tangible Personal Property, with coinsurance waived, or if a coinsurance clause is in effect, with an agreed amount endorsement acceptable to Beneficiary. Coverage shall extend to the Real Estate and to all tangible Personal Property.
- ii. If any boiler or other machinery is located on or about the Real Estate, broad form boiler and machinery coverage, including a form of business income coverage.
- iii. If the Property is located in a special flood hazard area (an area within the 100-year floodplain) according to the most current flood insurance rate map issued by the Federal Emergency Management Agency and if flood insurance is available, the flood insurance coverage on all insurable elements the Property.
- iv. A form of business income coverage in the amount of eighty percent (80%) of one year's business income from the Property.
- v. Commercial general liability coverage (which may be in the form of umbrella/excess liability insurance) with a One Million Dollar (\$1,000,000) combined single limit per occurrence and a minimum aggregate limit of Two Million Dollars (\$2,000,000).
- vi. Terrorism coverage if such insurance is available at commercially reasonable rates and the subject hazards are commonly insured against at the time by prudent institutional lenders for real properties similar to the Property and located in and around the region in which the Property is located; provided, however, that if the premium for the terrorism coverage is no more than two hundred percent (200%) of the premiums for all other property insurance coverage required hereunder it will be deemed to be commercially reasonable.
- vii. Such additional coverages appropriate to the property type and site location as Beneficiary may reasonably require, which at the time are commonly obtained for property similar to the Property located in and around the region in which the Property is located and that is customarily required by lenders in such areas in connection with loans similar to the Loan. Additional coverages may include earthquake, windstorm, mine subsidence, sinkhole, personal property, supplemental liability, or coverages of other property-specific risks.

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B. Each coverage required under this Section shall be primary rather than contributing or secondary to the coverage Trustor may carry for other properties or risks; provided, however, that blanket coverage which otherwise complies with this Section shall be acceptable if (i) the policy includes limits by property location, and (ii) Beneficiary determines, in the exercise of its sole and absolute discretion, that the amount of such coverage is sufficient in light of the other risks and properties insured under the blanket policy. The maximum deductible on each required coverage or policy is One Hundred Thousand Dollars (\$100,000).

C. On all property insurance policies and coverages required under this Section (including coverage against loss of business income), Beneficiary must be named as "first mortgagee" under a standard non-contributing mortgagee clause and such other endorsements or provisions satisfactory to Beneficiary as reasonably required to make loss payable to Beneficiary as its interest may appear. On all liability policies and coverages, Beneficiary must be named as an "additional insured." Beneficiary shall be referred to verbatim as follows: RGA Reinsurance Company, a Missouri corporation, and its successors, assigns, and affiliates; as their interest may appear; c/o RGA Mortgage Loan Servicing, P.O. Box 771320, St. Louis, Missouri 63177.

D. Each insurance carrier providing insurance required under this Section must have, independently of its parent's or any reinsurer's rating, a General Policyholder Rating of A, and a Financial Rating of X or better, as reported in the most current issue of Best's Insurance Guide, or as reported by Best on its internet web site. All insurance policies required hereunder shall not include exclusions for terrorism coverage or mold coverage,

E. All policies must require the insurance carrier to give Beneficiary a minimum of ten (10) days' notice in the event of modification, cancellation or termination for nonpayment of premium and a minimum of thirty (30) days' notice of nonrenewal. Trustor shall report to Beneficiary immediately any facts known to Trustor that may adversely affect the appropriateness or enforceability of any insurance contract, including, without limitation, changes in the ownership or occupancy of the Property, any hazard to the Property and any matters that may give rise to any claim. Prior to expiration of any policy required under this Section, Trustor shall provide either (a) an original or certified copy of the renewed policy, or (b) a "binder," an Acord 28 (real property), Acord 27 (personal property) or Acord 25 (liability) certificate, or another document satisfactory to Beneficiary conferring on Beneficiary the rights and privileges of mortgagee. If Trustor meets the foregoing requirement under clause (b), Trustor shall supply an original or certified copy of the original policy within ninety (90) days. All binders, certificates, documents, and original or certified copies of policies must name Trustor as a named insured, must include the complete and accurate property address and must bear the original signature of the issuing insurance agent.

F. Trustor promptly shall give notice by registered mail to Beneficiary of any loss or damage to said Property and shall not adjust or settle such loss without the written consent of Beneficiary. Should any loss occur to the Property or in the event the improvements on the Property are damaged or destroyed, in whole or in part, by fire or other casualty, the insurance company or

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companies are hereby directed by Trustor to make payment for such loss to Beneficiary only, and not to Trustor and Beneficiary jointly, and Beneficiary is hereby appointed attorney in fact for Trustor to make proof of loss if Trustor fails to do so promptly, and to receipt for any sums collected under said policies. Following the occurrence of fire or other casualty, Trustor, regardless of whether insurance proceeds are payable under the policies or, if paid, are made available to Trustor by Beneficiary, shall promptly proceed with the repair, alteration, restoration, replacement or rebuilding of the improvements as near as possible to their value, utility, condition and character prior to such damage or destruction and such repairs, alterations, restoration, replacement and rebuilding shall be satisfactory to Beneficiary. Except as expressly set forth herein, any insurance proceeds paid to Trustor or Beneficiary as result of any loss or damage to the Property shall, at the option of Beneficiary, be applied as payment on the indebtedness hereby secured, be used for the restoration or repair of the Property, or be released to Trustor, as Beneficiary may elect in its sole and absolute discretion. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall not be responsible for any insurance upon the said Property or the collection of any insurance money or for the insolvency of any insurer.

G. Unless Trustor provides Beneficiary with evidence of insurance coverage as required by this Deed of Trust (after written notice to Trustor), Beneficiary may purchase, at Trustor's expense, insurance to protect its interest. This insurance may, but need not, also protect Trustor's interest. If the improvements become damaged, the coverage Beneficiary purchases may not pay any claim Trustor makes or any claim made against Trustor. Trustor may later cancel this coverage by providing Beneficiary with evidence that it has obtained property coverage elsewhere. The cost of the insurance purchased by Beneficiary may be added to the indebtedness and thereafter the default rate shall apply to this added amount. The effective date of coverage may be the date any prior coverage lapsed or the date Trustor failed to provide proof of coverage. The coverage Beneficiary obtains may be considerably more expensive than insurance Trustor might have obtained on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

H. Trustor hereby assigns to Beneficiary all monies recoverable under each insurance policy required under this Section, and Beneficiary agrees that in the event of loss or damage to the Property or the improvements located thereon, the amount collected under any policy of insurance shall be made available for the restoration or repair of the Property under the following conditions: (i) such restoration or repair is completed in conformance with the provisions of any lease affected by the casualty (the "Lease") and provided that such Lease remains in full force and effect; (ii) such restoration or repair commences within ninety (90) days from the event necessitating the restoration or repair, or such earlier time required by said Lease, and is completed within the time required by said Lease, but no later than one (1) year from the date of the casualty and at least one (1) year prior to the Maturity Date (as such term is defined in the Note); (iii) no default, which is continuing beyond the expiration of any notice and cure period, exists under the Note or any of the Loan Documents; (iv) the insurance proceeds shall be held by Beneficiary and disbursed in accordance with such safeguards and funds disbursement

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arrangements as are reasonably satisfactory to Beneficiary, which may include, but not be limited to a retainage of ten percent (10%) and shall provide for the disbursement of required contractor progress payments; (v) Beneficiary is provided with reasonable assurance that the restoration will be completed and that no liens of mechanics and/or materialmen will be allowed to be filed against the Property for any such labor or materials; (vi) if Beneficiary determines, in its sole and absolute discretion, that the amount of insurance proceeds are not sufficient to pay the estimated cost of repair or restoration of the Property, Trustor shall deposit with Beneficiary sufficient funds as necessary to make up the deficiency between the amount of the insurance proceeds and the cost of the repair or restoration; (vii) Guarantor (as defined in the Separate Guaranty of Carveout Obligations dated as of the date hereof) shall furnish Beneficiary with a completion guaranty in a form satisfactory to Beneficiary; and (viii) the laws, ordinances and regulations applicable with respect to the Property permit the improvements located on the Property to be rebuilt to substantially identical size, condition and use as existed prior to the casualty and allow the improvement to occupy the same area as existed prior to the casualty.

4. To pay at least ten (10) days before they become delinquent, all taxes (both general and special), assessments and governmental charges of any kind levied or assessed or that become a lien against the above described Property, or any part thereof; to promptly furnish Beneficiary the receipts or such other evidence of payments as might be required by Beneficiary showing such payment; to allow no payment of any taxes, assessments or governmental charges by a third party with subrogation attaching, and not permit the said Property, or any part thereof, to be sold or forfeited for any tax, assessment or governmental charge whatsoever. Any irregularity or defects in the levy or assessment of taxes, assessments and governmental charges paid by Beneficiary are hereby expressly waived and receipt by the proper officer shall be conclusive evidence both as to the amount and validity of such payments.

5. If required by Beneficiary, Trustor shall also make monthly deposits with Beneficiary in a non-interest bearing account, together with and in addition to interest and principal installments, of an amount equal to the taxes and assessments which may be levied or assessed against the Property, and insurance premiums next due, less amount already deposited therefor, divided by the number of months to elapse prior to the date when such taxes, assessments and insurance premiums will become due and payable. The amount of such taxes, assessments and insurance premiums, when unknown, may be estimated by Beneficiary. Provided no default then exists beyond any applicable notice and cure period, such deposits, to the extent that they are sufficient, shall be used by Beneficiary to pay when due such taxes, assessments and insurance premiums, of which Beneficiary has notice. Any insufficiency of such account to pay such charges when due shall be paid by Trustor to Beneficiary on demand. If there is any default by Trustor under the provisions of this Deed of Trust which continues beyond the applicable notice and cure period, if any, and Beneficiary declares all sums secured hereby to be due and payable, Beneficiary may then apply any funds in said account against the indebtedness secured hereby in such manner as Beneficiary may elect. The enforceability of the covenants relating to taxes, assessments and insurance premiums herein otherwise provided shall not be affected except insofar as those obligations have been met by compliance with this paragraph. Beneficiary may, from time to time,

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at its option, waive, and after any such waiver reinstate, any or all provisions hereof requiring such deposits by notice to Trustor in writing. While any such waiver is in effect Trustor shall pay taxes, assessments and insurance premiums as herein elsewhere provided. Any irregularities or defects in the levy or assessment of taxes and assessments paid by Beneficiary are hereby expressly waived and receipt by the proper officer shall be conclusive evidence both as to the amount and validity of such payments. If the amount held by Beneficiary for the payment of taxes, assessments and insurance premiums pursuant to this Section exceeds the amount due, such excess shall be held, disbursed or credited as required by and in compliance with applicable law. Notwithstanding the foregoing, the Beneficiary shall waive the requirement that Trustor escrow monthly deposits for taxes, assessments, governmental charges, or insurance premiums, but only so long as: (i) no default shall exist under the Note and/or this Deed of Trust or any of the other Loan Documents, which has continued beyond any applicable notice and cure period; (ii) the taxes and assessments upon the Real Estate are kept paid as called for under Section 4 of this Deed of Trust and the Beneficiary is promptly provided with receipts evidencing such payment; and (iii) the Property is kept insured as called for under Section 3 of this Deed of Trust, and the Beneficiary is furnished with rights-conferring evidence establishing such insurance coverage. Beneficiary reserves the right to require such monthly deposits as provided above in this Deed of Trust in the event that any of the foregoing conditions (i), (ii), and/or (iii) is not timely satisfied.

6. To pay (i) all charges or debts and interest thereon, which constitute liens of equal rank with or have any preference or priority over the lien of this Deed of Trust, and (ii) all costs, fees and expenses of these Trusts, including cost of evidence of title, reasonable attorneys' fees incurred by Beneficiary in enforcing the provisions of this Deed of Trust, Trustee's fees and publication fees in connection with sale, whether completed or not.

7. To promptly pay and settle or cause to be removed any claim and to appear in and defend any action or proceeding affecting the Property covered by this Deed of Trust, the interest of Beneficiary hereunder; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary and/or Trustee may appear.

8. To repay, within fifteen (15) days from Beneficiary's demand therefor, all sums advanced or expended by Beneficiary under the provisions of this Deed of Trust, with interest thereon from the date of advancement until repaid at the after-default rate of interest then applicable under the Note secured hereby, all of which sums advanced or expended shall be secured hereunder and shall be payable forthwith.

9. A. A default, for which no notice and cure period shall be given, shall exist hereunder upon the occurrence of any of the following events:

- i. Trustor's failure to pay, or to cause to be paid, (a) any regular monthly payment of principal and interest under the Note, together with any required monthly escrow payment, on or before the tenth (10<sup>th</sup>) day of the month in which it is due, and (b) all

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- amounts due and owing under the Note and other Loan Documents on the Maturity Date (as defined in the Note);
- ii. Trustor's failure to pay, or to cause to be paid, the Indebtedness due under the Note upon maturity as a result of acceleration under Section 10.iv hereof;
  - iii. Trustor's failure to pay, or to cause to be paid, within ten (10) business days of Beneficiary's demand, any other amount required under the Note, this Deed of Trust or any of the other Loan Documents;
  - iv. Beneficiary's discovery that any representation made by Trustor in any Loan Document was materially untrue or misleading when made, if the misrepresentation either was intentional or is not capable of being cured as described in Subsection 9.B below;
  - v. The occurrence of any sale, conveyance or other transfer in violation of the provisions of Section 21 hereof;
  - vi. Trustor or any party liable for the payment of the Indebtedness, or any part thereof, files a voluntary petition in bankruptcy, makes an assignment for the benefit of any creditor, or is declared bankrupt or insolvent, or if a creditor's or debtor's petition (other than a petition filed by Beneficiary) affecting said Property, filed pursuant to the provisions of the Bankruptcy Act, as amended, is approved, or if the Property, or any part thereof are placed under the control or in the custody of any court, receiver or trustee, or if Beneficiary shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Beneficiary under this Deed of Trust unless such action or proceeding is dismissed within sixty (60) days;
  - vii. The existence of any default under any other Loan Document which continues beyond the expiration of the applicable notice and cure period, if any; or
  - viii. The failure of Trustor to fully protect, insure, preserve and cause continued performance and fulfillment of the terms, covenants or provisions in any lease of the Property that is required to be performed or fulfilled by the landlord under lease(s) in effect with respect to the Property, which breach, default or failure continues beyond the applicable notice and cure period, if any, under the relevant lease.

B. Except as expressly set forth in Section 9.A or elsewhere in the Loan Documents, a default shall exist under this Deed of Trust and the other Loan Documents, in the event Trustor should fail or refuse to do any act which Trustor is obligated to make or do hereunder or under the terms of the other Loan Documents, at the time and in the manner herein provided or in the event of any violation of the terms and provisions of any of the Loan Documents and such failure,

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refusal or violation continues for more than thirty (30) days after Beneficiary provides Trustor written notice thereof (or, if such default is of such a nature that it cannot be cured with due diligence within thirty (30) days, Trustor shall fail or refuse to commence such cure within said thirty (30) day period and thereafter diligently in good faith pursue the same to completion; in no event, however, shall the cure period, as extended hereby, exceed sixty (60) days). During the cure period, Trustor has the obligation to provide on demand satisfactory documentation of its effort to cure, and, upon completion, evidence that the cure has been achieved. All notice and cure periods provided in this Deed of Trust shall run concurrently with any notice or cure periods provided by law.

C. INTENTIONALLY DELETED.

10. In the event of a default under this Deed of Trust or under any of the other Loan Documents, which default continues beyond the applicable notice and cure period, if any, Beneficiary shall, without notice or demand upon Trustor, and without releasing Trustor from any obligation hereunder, pursue all rights and remedies provided herein, or at law or equity and may, at Beneficiary's option:

- i. Make or do the same in such manner and to such extent as may be deemed necessary by Beneficiary to protect the Property and enter upon the Real Estate to inspect, repair, protect and care for the Property and advance such sums of money for that purpose as by Beneficiary may be deemed necessary or advisable.
- ii. Commence, appear in or defend any action or proceeding affecting or purporting to affect the Property covered by this Deed of Trust, or the lien or validity of this Deed of Trust, whether brought by or against Trustor or Beneficiary.
- iii. Pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which adversely affects the Property covered by this Deed of Trust or the lien or validity of this Deed of Trust, the interests of Beneficiary or the rights, powers and duties of Trustee hereunder.
- iv. Declare the unpaid principal balance of the Note to be immediately due and payable, together with all accrued interest thereon, all costs of collection (including reasonable attorneys' fees and expenses) and all other charges due and payable by Trustor under the Note or any other Loan Document. Except as required by law, no notice of acceleration shall be required in order for Beneficiary to exercise its option to accelerate the indebtedness in the event of a default.
- v. To the extent permitted by law, enter upon the Real Estate and take exclusive possession of the Real Estate and of all books, records and accounts, all without notice and without being guilty of trespass, but subject to the rights of tenants in possession under the lease(s) in effect with respect to the Property. If Trustor remains

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in possession of all or any part of the Property after default and without Beneficiary's prior written consent, Beneficiary may, without notice to Trustor, invoke any and all legal remedies to dispossess Trustor.

- vi. Hold, lease, manage, operate or otherwise use or permit the use of the Real Estate in such manner and for such time as, under the circumstances, Beneficiary may deem to be prudent and apply all rents, income and profits thereof in accordance with the provisions of the Assignment of Leases and Rents dated of even date herewith.
- vii. Apply to a court of competent jurisdiction for the appointment of a receiver of the Property, ex parte without notice to Trustor, whether or not the value of the Property exceeds the indebtedness secured hereby, whether or not waste or deterioration of the Property has occurred, without regard to the solvency or insolvency of Trustor or any Guarantor and whether or not other arguments based on equity would justify the appointment. **Trustor irrevocably, with knowledge and for valuable consideration, consents to the appointment of a receiver, with or without notice, which notice is hereby expressly waived.** In connection with any action brought by Beneficiary for appointment of a receiver as allowed herein, Trustor hereby consents to and confesses to the jurisdiction and venue of any competent court within the State of Utah. Any such receiver shall have all the rights and powers customarily given to receivers in Utah, including the rights and powers granted to Beneficiary by this Deed of Trust, the power to maintain, lease and operate the Property on terms approved by the court, and the power to collect all rents, income and profits generated by the Property and apply them to the indebtedness secured hereby or otherwise as the court may direct. Any money advanced by Beneficiary in connection with any such receivership shall be a demand obligation owing by Trustor to Beneficiary, shall bear interest from the date of such advance at the Default Rate, shall be added to the principal balance of the Note and shall become part of the indebtedness evidenced thereby. Once appointed, a receiver may at Beneficiary's option remain in place until the indebtedness has been paid in full, including the time covered by foreclosure proceedings and the period of redemption, if any.

11. Trustor hereby represents and warrants to Beneficiary that:

- i. Trustor has good and marketable title to the Real Estate in fee simple absolute, subject only to those exceptions specifically approved by Beneficiary as shown on the mortgagee's policy of title insurance for this Loan (the "Permitted Exceptions").
- ii. This Deed of Trust is a valid and enforceable first lien and security interest in the Property, subject only to the Permitted Exceptions, subject to applicable bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

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- iii. Trustor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular, all of the Property and property interests granted and conveyed in trust pursuant to this Deed of Trust, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

The representations, warranties and covenants above shall survive foreclosure of this Deed of Trust, and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to any such foreclosure or deed in lieu of foreclosure (other than a third party purchaser not affiliated with Beneficiary).

12. Trustor further represents, warrants and covenants to Beneficiary, now and during the term of the Loan, as follows:

- i. There is no pending or, to Trustor's knowledge, threatened, litigation, action, proceeding or investigation as to which Trustor has received notice, including, without limitation, any condemnation proceeding, against Trustor, or any person(s) or entities comprising Trustor, or the Property before any court, governmental or quasi-governmental, arbitrator or other authority, which if adversely determined is reasonably likely to have a material adverse effect on the Property or on the financial condition of Trustor.
- ii. Access to and egress from the Property are available and provided by public streets, and Trustor has no knowledge of any federal, state, county, municipal or other governmental plans to change the highway or road system adjacent to the Property or to restrict or change access from any such highway or road to the Property.
- iii. Trustor is and shall remain duly organized, validly existing and in good standing in its state of origination, as applicable, and is duly authorized to transact business in and is in good standing in the State of Utah.
- iv. The execution, delivery and performance by Trustor of this Deed of Trust, the Note, and any documents executed in connection with such Note are within Trustor's power and authority and have been duly authorized by all necessary action.
- v. Adequate utilities services exist for the full and beneficial development, ownership, use, occupancy, operation and maintenance of the Property and Trustor is not in default of any obligation to any utility service provider.
- vi. To Trustor's actual knowledge, the Property is appropriately zoned to permit the development, use and operation of the Property as it is currently operated as a matter of right and not as a non-conforming use, and the Property complies in all respects

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with all requirements, conditions, restrictions, zoning ordinances and regulations applicable to the Property.

- vii. Trustor is now, or will hereafter be, the absolute owner and in possession of all the Personal Property, and that such Personal Property is free from any adverse liens, encumbrances or security interest, and this Deed of Trust will remain a first lien upon all of the Personal Property, subject only to those exceptions specifically approved by Beneficiary; the specific enumerations herein not limiting the general.
- viii. Trustor and the Property is and shall remain under the "Legal Control" of CCA Acquisition Company, LLC and Steven H. Usdan and the Property shall be managed at all times by CCA Acquisition Company, LLC, Steven H. Usdan or by a financially sound, professional property management company, experienced in managing properties similar in type and quality to the Property or another property management company reasonably approved in writing by Beneficiary. As used herein "Legal Control" means the power, either directly or indirectly, to exercise the authority of Trustor, both as an entity and as owner of the Property, either as the majority shareholder of the common stock of a corporation, as the sole general partner of a limited partnership, as the managing general partner of a general partnership, or as the manager or managing member of a limited liability company, provided the person or entity exercising such authority cannot be divested of such authority, except for cause.
- ix. The Property shall be used for commercial rather than residential, personal, family, household or agricultural purposes and shall not become homestead property of Trustor or any other person.
- x. Trustor shall operate and maintain the Property independently from other land and improvements not included within or located on the Real Estate. In fulfilling this covenant, Trustor shall neither take any action which would make it necessary to own or control any property other than the Property in order to meet the obligations of the landlord under any lease of the Real Estate, or in order to comply with any applicable laws, regulations or ordinances, nor take any action which would cause any land or improvements other than the Real Estate and the improvements located thereon to rely upon the Real Estate or said improvements for those purposes.
- xi. Trustor shall perform its obligations as landlord under any leases affecting the Property and shall neither take any action, nor fail to take any action, if the action or failure would be inconsistent with the commercially reasonable management of the Property for the purpose of enhancing its long-term performance and value.
- xii. In the event of a default under any of the Loan Documents which continues beyond the expiration of any applicable notice and cure period, Trustor shall not pay any

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dividend or make any partnership, trust or other distribution, and shall not make any payment or transfer any property in order to purchase, redeem or retire any interest in its beneficial interests or ownership.

- xiii. All fees and assessments due and payable pursuant to all declarations, covenants, conditions, restrictions and easements of record affecting the Property (the "Record Documents") are, as of the date hereof, paid in full and all actions required of Trustor pursuant to any such Record Documents have been performed by Trustor as of the date hereof (i.e., there are no outstanding duties or obligations under any such Record Documents requiring performance by Trustor). Trustor shall pay all future fees and assessments required by such Record Documents (or cause all such future fees and assessments to be paid) prior to delinquency and shall perform all obligations of Trustor (or cause all obligations to be performed) as and when required pursuant to the Record Documents.

13. A. Trustor by execution of this Deed of Trust represents, warrants and covenants that it (i) has been and shall continue to be organized solely for the limited purpose of acquiring, owning, improving, leasing, managing, operating, holding for investment and selling or otherwise disposing of the Property and doing only those things necessary in connection therewith, (ii) shall not engage in any other business, (iii) shall have no other purpose, (iv) shall not own or acquire any real property other than the Real Estate included in the Property or any personal (tangible or intangible) property other than Personal Property included in the Property or in furtherance of the purposes of Trustor as stated herein, and (v) shall not incur, create, or assume any indebtedness or liabilities, secured or unsecured, direct or contingent, other than (a) the Loan and (b) unsecured indebtedness that represents trade payables or accrued expenses occurring in the normal course of business of owning and operating the Property that is not evidenced by a promissory note and is due and payable within thirty (30) days after the date incurred and which in no event exceeds two percent (2%) of the original principal amount of the Note.

B. Trustor by execution of this Deed of Trust represents, warrants, and covenants that it has not taken and shall not take any of the following actions:

- i. Any "Bankruptcy Action", which is defined to include without limitation:
  - (a) Taking any action that might cause Trustor to become insolvent;
  - (b) Commencing any case, proceeding or other action on behalf of Trustor or under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;
  - (c) Instituting proceedings to have Trustor adjudicated as bankrupt or insolvent;

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- (d) Consenting to the institution of bankruptcy or insolvency proceedings against Trustor;
- (e) Filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of Trustor of its debts under any federal or state law relating to bankruptcy;
- (f) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Trustor or a substantial portion of its properties;
- (g) Admitting in writing Trustor's inability to pay debts generally as they become due;
- (h) Making any assignment for the benefit of Trustor's creditors; or
- (i) Taking any action in furtherance of the foregoing;
- ii. Dissolve, liquidate or terminate in whole or in part, or consolidate with or merge into any person or entity, or sell, transfer or otherwise dispose of or encumber all or substantially all of its assets or change its legal structure;
- iii. Amend or recommend the amendment of any formation or organizational document of Trustor unless Beneficiary consents to such amendment;
- iv. Fail to preserve its existence as an entity duly organized, validly existing and in good standing (if required) under the applicable laws of the jurisdiction of its organization or formation;
- v. Terminate or fail to comply with the provisions of its organizational documents; or
- vi. Engage in any business or activity that is not consistent with the purposes of Trustor as set forth in Section 13.A above.

C. Except as otherwise expressly required by any instrument evidencing or securing the Loan, Trustor by execution of this Deed of Trust represents, warrants, and covenants that it shall at all times:

- i. Not commingle assets with those of any other entity;
- ii. Hold its assets in its own name;
- iii. Conduct its own business in its own name;

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- iv. Maintain its bank accounts, books, records and financial statements in accordance with generally accepted accounting principles, keep such bank accounts, books, records and financial statements separate from those of any other person or entity, and not permit the listing of its assets on the financial statement of any other person or entity;
- v. Maintain its books, records, resolutions and agreements as official records;
- vi. Pay its own liabilities out of its own funds;
- vii. Maintain adequate capital in light of its contemplated business operations;
- viii. Observe all organizational formalities;
- ix. Maintain an arm's-length relationship with Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis;
- x. Pay the salaries of only its own employees and maintain a sufficient number of employees in light of contemplated business operations;
- xi. Not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of others;
- xii. Not acquire the obligations or securities of its Affiliates or owners, including partners, members or shareholders;
- xiii. Not make loans or advances to any other person or entity;
- xiv. Allocate fairly and reasonably any overhead for shared office space;
- xv. Use separate stationery, invoices and checks;
- xvi. File its own tax returns (unless prohibited by applicable laws from doing so);
- xvii. Not pledge its assets for the benefit of any other person or entity;
- xviii. Hold itself out as a separate entity, and not fail to correct any known misunderstanding regarding its separate identity;
- xix. Not identify itself as a division of any other person or entity;

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- xx. Not maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other person or entity; and
- xxi. Observe the single purpose entity and separateness covenants and requirements set forth herein.

D. As used in this Section, the terms shall have the meanings set forth herein:

- i. "Affiliate" means a person or entity that directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control of or with, the person or entity specified; and
- ii. For purposes of the definition Affiliate, "control" means: (a) whether directly or indirectly, ownership or control of the power to vote fifty percent (50%) or more of the outstanding equity interests of any such entity; (b) the control in any manner of the election of more than one director or trustee (or persons exercising similar functions) of such entity; or (c) the possession of the power to direct or cause the direction of the management and/or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

E. Trustor by execution of this Deed of Trust acknowledges and agrees with Beneficiary that Beneficiary would be irreparably damaged if any of the covenants of this Section 13 are breached or not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which Beneficiary may be entitled, at law or in equity, Beneficiary shall be entitled to injunctive relief to prevent or remedy breaches of the provisions of this Section 13 and specifically to enforce the terms and provisions of this Section 13 in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

14. In case of default in the payment of said Note or any installment thereof, or any part thereof, or in the payment of the interest thereon, according to the tenor and effect of said Note, or in the payment of any prior encumbrance, principal or interest, if any, or in case default shall be made in or in case of violation or breach of any of the terms, conditions, covenants or agreements herein contained which continues beyond the applicable notice and cure period, if any, or in the event any warranty or representation hereunder is false, Beneficiary hereunder or the legal holder of the indebtedness secured hereby may declare a violation of any of the conditions, covenants or agreements herein contained and elect to foreclose through Trustee by delivering to Trustee a written statement of default or breach and causing Trustee to execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with *Utah Code Annotated* Section 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Code Annotated* Section 57-1-24 or other applicable law following the recordation of the notice of default, and notice of sale having been given as then required by

*Utah Code Annotated* Section 57-1-25 and Section 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor'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), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the 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 Annotated* Section 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* Section 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale in the following order: (1) the costs, expenses and fees of taking possession of the Property and upholding, operating, maintaining, using, leasing, repairing and selling (by Trustee) the same prior to title passing from Trustor and of otherwise enforcing Beneficiary's rights and remedies hereunder and under the Loan Documents, including, but not limited to Trustee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Trustee; (2) all sums expended by, or payable to, Beneficiary under the terms of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate; (3) the unpaid principal due under said Note; (4) all past due and accrued interest on the indebtedness evidenced by the Note, including interest at the Default Rate; and (5) the remainder of such proceeds of sale, if any, shall be paid to said Trustor or those entitled to receive said remainder; alternatively, Trustee may, in its sole discretion, deposit the balance of the proceeds with the clerk of the district court in the county in which the sale took place, in accordance with *Utah Code Annotated* Section 57-1-29. Said sale or sales and said deed or deeds so made shall be a perpetual bar, both in law and equity against Trustor, his, her or their heirs or assigns, and all other persons claiming said Real Estate, or any part thereof, by, from, through or under Trustor or any of them. The holder or holders of said Note, including Beneficiary, shall have equal rights to become the purchaser at said sale, being the highest bidder, and in the event of such purchase shall be allowed to, in lieu of paying cash therefor, make settlement for the purchase price by crediting upon the Indebtedness the net sales price after deducting therefrom the expenses from the sale and the costs of the action and any other sums which Beneficiary and/or Trustee are authorized to deduct under this Deed of Trust. Notwithstanding anything to the contrary contained herein, this instrument shall be effective as a mortgage as well as a deed of trust and may be foreclose, in accordance with *Utah Code Annotated* Section 57-1-23, as to any of the Property in any manner permitted by Utah law. Nothing herein pertaining to foreclosure proceedings or specifying particular actions to be taken by Beneficiary shall be deemed to contradict or add to the requirements and procedures of Utah law and any such conflict or inconsistency shall be resolved in favor of Utah law applicable at the time of foreclosure.

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In addition, Beneficiary may pursue every legal and equitable remedy available at law and including, without limiting the generality of the foregoing, the remedies of a Beneficiary under the Uniform Commercial Code of the State(s) in which Personal Property or Trustor is located, as applicable (as such Code now or hereafter exists and regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted), the right to take possession of the Property and enter the premises on which the Personal Property or any part thereof may be situated and remove the same therefrom, the right to resell the Personal Property at any place Beneficiary elects, the right to require Trustor to make the Personal Property available to Beneficiary at a place designated by Beneficiary and reasonably convenient to both parties, and without removal, the right to render the Personal Property unusable and to dispose of the Personal Property on the Real Estate; provided Beneficiary shall send Trustor at least five days' prior written notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or any other intended disposition is to be made, by United States mail, postage prepaid, to the address set forth above, and Beneficiary may bid and purchase Personal Property at public or private sale.

The disposition of any Personal Property may be conducted by an employee or agent of Beneficiary and Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to the sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name of and on behalf of Beneficiary. Any person, including Beneficiary, shall be eligible to purchase any part or all of the Personal Property at such disposition. Any sale made pursuant to the provisions of this Section shall be deemed to have been conducted in a commercially reasonable manner if held contemporaneously with the sale under power of sale as provided hereunder upon giving the notice with respect to the sale of Personal Property as is required hereunder. It shall not be necessary that Beneficiary take possession of the Personal Property prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Personal Property be present at the location of such sale.

If there is a foreclosure sale hereunder and upon expiration of the redemption period, if Trustor or Trustor's representatives, successors or assigns, or any other person claiming any interest in the Property by, through or under Trustor are occupying or using the Property, or any part thereof, each and all shall, at the option of Beneficiary or any purchaser at such sale, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy at sufferance at a reasonable rental per day based upon the value of the Property occupied or used.

15. That if while said Note and this Deed of Trust is owned by a non-resident of the State in which said Property is situated any law is passed by said State imposing upon such non-resident holder any tax upon the Note or Deed of Trust or any liability to pay any part of the tax against the said Property, or changing any of the laws for the taxation of mortgagees or debts secured hereby, such holder, if it so elects upon ninety (90) days' written notice may declare the

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debt due and payable and the Deed of Trust foreclosable unless Borrower agrees to pay such tax and does so within thirty (30) days of Beneficiary's request therefor.

16. Trustor hereby fully and absolutely waives and releases all rights and claims Trustor may have in or to the Property as a homestead exemption, under and by virtue of any Utah law now existing or which may hereafter be passed in relation thereto. The indebtedness evidenced by the Note is made for business, commercial, investment or other similar purposes and not for personal, consumer, family, household, educational, agricultural or similar uses and the loan proceeds shall not be used for such non-commercial purposes.

17. All judgments, decrees and awards for injury or damage to said Property and all awards pursuant to proceedings for condemnation thereof, as rent or otherwise and whether for a temporary taking or otherwise, are hereby assigned in their entirety to Beneficiary who may apply the same to the indebtedness secured hereby in such manner as Beneficiary may elect, and Beneficiary is hereby authorized in the name of Trustor to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. Settlement shall be made pursuant to any decree or proceedings for condemnation only with the consent of Beneficiary.

18. In the event any party liable for the payment of the indebtedness secured hereby, or any part thereof, files a voluntary petition in bankruptcy, makes an assignment for the benefit of any creditor, or is declared bankrupt or insolvent; or if a creditor's or debtor's petition affecting said Property, filed pursuant to the provisions of the Bankruptcy Act, as amended, is approved; or if said Property, or any part thereof, is placed under the control or in the custody of any court; then, in either or any of said events, Beneficiary may, at its option, have the same rights and remedies as if default were made in the payment of the Note secured hereby or any installment of principal or interest thereon and continued beyond any applicable notice and cure period, if any, and may have the further right, at its option, to appear in and defend and protect its right and interest under any such action or proceeding and Trustor agrees to pay upon demand all costs and expenses, including reasonable attorneys' fees, which may be advanced or incurred by Beneficiary, and all such amounts so advanced or incurred by Beneficiary shall be a lien on the said Property and secured by this Deed of Trust.

19. Acceptance by Beneficiary of any sum in payment of any indebtedness secured hereby, after the date when the same is due, or the exercise of any right given hereunder shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured or to declare default as herein provided for failure so to pay such sums or to perform any of the terms, conditions, agreements or covenants hereunder.

20. It is agreed that (i) if any modifications, extensions or renewals be made of the time or manner of payment of all or any part of the indebtedness secured by this Deed of Trust, (ii) if any person liable for the payment of any of the indebtedness secured hereby be released, (iii) if consent be given to the making of any map or plat of the Real Estate, (iv) if Beneficiary joins in any easement or restrictions be granted or created thereon, (v) if any subordination or other

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agreement affecting this Deed of Trust be joined in by Beneficiary, or (vi) if any part of the Property be released from the lien hereof or the security interest granted hereunder be terminated and released, it shall not alter or affect the lien or security interest created by this Deed of Trust whether in favor of any junior encumbrancer, or purchaser, or any person acquiring an interest in said Property or any part thereof or otherwise; it being the intention of the parties hereto to preserve this lien on the said Property and all improvements that may be placed thereon hereafter, prior to any liens that may be placed thereon or fixed, given or imposed by law thereon, after the execution of this Deed of Trust and prior to the rights of any subsequent lienor, mortgagee, beneficiary or purchaser of all or any part of the said Property, notwithstanding any such modifications, extensions, renewals, actions, events or releases.

21. Except as expressly permitted herein, (i) upon the direct or indirect voluntary or involuntary sale, exchange, conveyance, encumbrance, transfer, alienation, removal or other disposition of (a) the Property, or any part thereof, or any interest therein in violation of the Loan Documents, or (b) all or part of the legal or beneficial ownership interest in Trustor in violation of the Loan Documents, or (ii) if the title to the Property or any part thereof shall become vested in any party other than Trustor in any manner whatsoever in violation of the Loan Documents, the Note and obligations secured by this Deed of Trust, irrespective of the maturity dates expressed therein, at the option of the holder hereof, and without demand or notice, shall immediately become due and payable, and Beneficiary and/or Trustee shall be entitled to any remedies available to them under the Note, this Deed of Trust, or any other document executed in connection with the Note or this Deed of Trust, at law or in equity.

22. If a release deed or termination statement be required, it is agreed that Trustor will pay the expense thereof. In addition, if Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* Section 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* Section 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

23. A. Trustor will furnish to Beneficiary, its successors and assigns or authorized servicer, on or before March 31 of each year hereafter for the term of the Loan, the following information: (i) income and expense statements with respect to the Real Estate; (ii) rent roll with respect to the Real Estate, showing area leased, monthly rent, expense contribution and lease expiration dates; and (iii) current financial statements on Trustor, its successor or assigns and any Guarantor(s) of Trustor's obligations to Beneficiary. Such information shall be sworn to, and based upon records compiled in conformity with recognized accounting practices. Beneficiary may, at its option, require Trustor to furnish to Beneficiary a rent roll and income and expense statements for the Real Estate on a quarterly basis together with the annual summary required above. The financial statements, income and expense statements and rent roll must be certified by Trustor as true and accurate; provided, however, if the Loan is in default or if Beneficiary reasonably believes that any

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previously provided financial information may have been misleading or inaccurate, Beneficiary may require that such statements be certified by an independent certified public accountant prepared in accordance with generally accepted accounting principles, consistently applied.

B. In the event Trustor or any Guarantor fails to timely provide the required financial statements and property reports and does not cure such failure within ten (10) days after written notice from Beneficiary, a fee of One Thousand Dollars (\$1,000.00) shall be added to each monthly payment until the required reports have been provided. This fee is designed to compensate Beneficiary for (i) the increased risk to Beneficiary resulting from the inability to monitor and service the Loan using up-to-date information and (ii) the reduced value and liquidity of the Loan as a financial asset.

24. All notices hereunder shall be in writing. All notices to be given hereunder (including, without limitation, notices of sale or default) may be given by any of the following means: (i) personal service; (ii) overnight delivery by a reliable nationally-recognized overnight courier; or (iii) U.S. Mail, postage thereon prepaid, return receipt requested. Written notice shall be deemed effective as follows: (i) if by personal service or overnight delivery, upon delivery or first attempted delivery, and (ii) if by U.S. Mail, three (3) days after deposit in the U.S. Mail. Notices to Trustor or Beneficiary shall be addressed to the mailing address for the applicable party shown in the caption hereof, and a copy of any notice to Beneficiary shall also be delivered to Beneficiary at 16600 Swingley Ridge Road, Chesterfield, Missouri 63017, "Attention: Global Legal Services." Each of the parties may hereafter designate a different address for notices hereunder by providing notice of such designation to the other parties pursuant to the procedures set forth above. Beneficiary hereby requests, pursuant to *Utah Code Annotated* Section 57-1-26(3), a copy of any notice of default and that any notice of sale be mailed to it at the address set forth in the opening paragraph of this Deed of Trust and a copy of such notice sent as provided in this Section 24.

25. Except as set forth in the environmental site assessment obtained by Beneficiary in connection with the origination of the Loan or as otherwise disclosed to Beneficiary in writing, Trustor represents that it, and, to Trustor's knowledge, the holders (herein jointly called "Persons Responsible") of easements, leases, licenses, occupancy agreements and any other rights relating to the use of all or any portion of the Property herein described are currently in compliance with, and covenants and agrees that it will manage and operate the Property and will cause each Person Responsible to occupy and use its demised portion of the Property in compliance with all applicable Environmental Laws (as defined in the Environmental Indemnity Agreement dated as of the date hereof given by Trustor to Beneficiary) regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, treatment and removal, handling or disposal of Hazardous Substances (as defined in the Environmental Indemnity Agreement dated as of the date hereof given by Trustor to Beneficiary) or other materials including, without limitation, raw materials, products, building components, supplies or wastes. Trustor further covenants and agrees that it shall not install or permit to be installed in the Property asbestos or any substance containing asbestos and deemed hazardous by or in

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violation of any Environmental Law respecting such material. Trustor shall send to Beneficiary, within five (5) days of receipt or completion thereof, any report, citation, notice or other writing including, without limitation, hazardous waste disposal manifests, by, to or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the activities discussed in this paragraph, whether demonstrating compliance with applicable law, noticing noncompliance, requesting or requiring notice or action, commencing investigation or requesting Trustor to show cause why action is not required. After reasonable inquiry and investigation, except as set forth in the environmental site assessment obtained by Beneficiary in connection with the origination of the Loan or as otherwise disclosed to Beneficiary in writing, Trustor is not aware of any Hazardous Substances on or in the Property whether contained in tanks or other containers, in structures or equipment, or incorporated in buildings. In the event that, through whatever means, Trustor or a third party discovers Hazardous Substances on the Property, Trustor shall remedy, rectify, rehabilitate, correct and remove from the Property and dispose of any such Hazardous Substances or other materials in a manner consistent with, as required by and in compliance with applicable laws, rules, regulations and ordinances, except to the extent caused by the gross negligence or willful misconduct of Beneficiary or its authorized agents or employees. Trustor shall take any and all commercially reasonable action necessary, including but not limited to, bringing legal suit against, those Persons Responsible for the presence of the substance on site, or otherwise obligated by law to bear the cost of such remedy. Beneficiary shall be subrogated to Trustor's rights against any and all Persons Responsible; provided, however, Beneficiary shall in no event be obligated to remedy, rectify, rehabilitate, correct or remove and dispose of any Hazardous Substances nor shall Beneficiary be obligated to take any action against Persons Responsible for the foregoing activities. Trustor agrees to indemnify, defend with counsel acceptable to Beneficiary (at Trustor's sole cost), and hold Beneficiary harmless against any claim, response or other costs, damages, liability, loss or demand (including without limitation reasonable attorney fees and costs incurred by Trustor or Beneficiary) arising out of any claimed violation by Trustor or any Person Responsible for any of the foregoing laws, regulations or ordinances or breach of any of the foregoing representations, covenants or agreements, except to the extent caused by the gross negligence or willful misconduct of Beneficiary or its authorized agents or employees. Trustor grants to Beneficiary and its employees, agents, consultants and contractors, an irrevocable license and authorization to enter upon the Property (upon reasonable prior notice) and inspect the Property, and perform such tests (including without limitation soils and subsurface testing) as Beneficiary in its reasonable discretion deems necessary for the purpose of determining or verifying the presence or absence of Hazardous Substances on, under or about the Property, and verifying compliance with this Section 25 by Trustor and the tenants and occupants of the Property. Beneficiary agrees not to undertake such inspections and tests unless Beneficiary has reasonably determined, in good faith, that Hazardous Substances may be present on, under or about the Property, or that a violation of applicable Environmental Laws may have occurred. If Beneficiary discovers the presence of any Hazardous Substances not previously disclosed to Beneficiary by Trustor, then Trustor shall pay Beneficiary's actual costs for such inspections and tests, upon demand. Trustor specifically agrees that, notwithstanding any provision to the contrary in this Deed of Trust this indemnification shall survive the reconveyance or release of

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this Deed of Trust, whether pursuant to payment in full of the Note or judicial or non-judicial foreclosure by Beneficiary under this Deed of Trust for all matters that accrue or arise during Trustor's ownership of the Property, and that, if requested by Beneficiary, Trustor at any time shall execute a separate writing setting forth such indemnification. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"): (i) any obligations evidenced by or arising under the Environmental Indemnity Agreement dated as of the date hereof, and (ii) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Substances and are the same or have the same effect as any of the obligations evidenced by or arising under the Environmental Indemnity Agreement dated as of the date hereof. Any breach or default with respect to the Unsecured Obligations shall constitute an event of default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust.

26. Trustor does hereby assign, transfer, and set over unto Beneficiary all leases, rents, revenues, and income on and from the Property covered by this Deed of Trust. This assignment is intended by Trustor to create, and shall be construed to create, a present and absolute assignment to Beneficiary subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the Note or any instrument given as security for said Note, or any other indebtedness of Trustor. Trustor shall have a revocable license to collect and receive the rents (but not more than one month prior to accrual), income and profits arising under said leases or from the Property and to retain, use and enjoy said rents, income and profits. Such license may be revoked by Beneficiary, without notice to Trustor, upon the occurrence of a default by Trustor in payment of the principal sum, interest and indebtedness secured hereby and by said Note or in the performance of any obligation, covenants or agreement herein or in said Note or other documents executed in connection therewith or in said leases contained on the part of Trustor to be performed, which has continued beyond any applicable notice and cure period. Unless and until the license is so revoked, Trustor shall hold all rents, income and profits as a trust fund and agrees to apply said rents, income and profits to the payment of principal and interest due under the Note and of taxes, assessments, water rates, sewer rents, lien claims, and to operation and maintenance charges relating to the Property which are due and payable at the time of collection of the rents, income and profits before using the rents, income or profits for any other purpose. Upon default in the payment of any installment of principal or interest of the Note secured hereby or upon default in the performance of any of the conditions, covenants, or agreements herein contained or under any other document executed in connection with the Note or this Deed of Trust, which continues beyond any applicable notice and cure period, Beneficiary, through its employees or agents shall be entitled to immediate possession of said Property and shall have the right to control, manage, and operate the same and collect the rents and revenue therefrom and, after the deduction of the expenses incidental thereto, including reasonable attorneys' fee, shall apply the rents and revenue derived from the Property to the payment of any indebtedness then due and secured hereby or incurred hereunder, in such manner as Beneficiary may elect, and after all

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causes of default shall have been remedied and after making such provisions for the next maturing obligations as Beneficiary shall deem advisable, said Property and any surplus remaining in the hands of Beneficiary shall be turned over to Trustor or to the party entitled thereto. This assignment of leases, rents, revenues, and income shall be irrevocable and in addition to other remedies herein provided for in the event of default, but Beneficiary shall be under no liability for failure to take possession of the Property or by reason of its failure or inability to collect any rents, revenues, or income herein assigned. This assignment shall apply to all rents, revenues, and income hereinafter accruing from present leases and tenants, and from all leases and rentals hereinafter made by the present or any future owners of the Property. The power of entry and the powers incident thereto as in this Section provided for may be exercised as often as occasion therefor shall arise, and their exercise shall not suspend or modify any other right or remedy hereunder. Trustor further agrees that upon or after default under this Deed of Trust or the Note secured hereby, or in any other instrument executed in connection with the Note, which continues beyond any applicable notice and cure period, that Beneficiary may cause this assignment to be enforced, without regard to the adequacy of the security or the solvency of Trustor, by any one or more of the following methods or by any method listed above: (i) the appointment of a receiver, upon ex-parte application, if appropriate; (ii) collecting such monies directly from the parties obligated for payment; and/or (iii) injunction. Beneficiary's non-enforcement of this assignment shall not be deemed a waiver of default.

27. Time is of the essence as to each and every obligation and/or payment hereunder.

28. Trustor hereby waives to the fullest extent allowed by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating directly or indirectly to the loan evidenced by the Note, the application or mortgage loan commitment for the loan evidenced by the Note, this Deed of Trust, or any other document executed in connection with the Note, or any acts or omissions of Trustee, Beneficiary, its officers, employees, directors or agents in connection therewith.

29. This Deed of Trust shall be governed by and construed under the laws of the state where the Property is located.

30. If Trustor is comprised of more than one person or entity, then all such persons or entities shall be jointly and severally liable for all obligations arising under the Note, this Deed of Trust and any other documents executed in connection with the Note.

31. A. Except with respect to the Carveout Obligations (as defined in the Note) and as expressly provided elsewhere in the Loan Documents, liability otherwise under this Deed of Trust shall be limited to the Property described herein, and Trustor (including any and all general or limited partners, members or joint venturers of such Trustor) shall not be personally liable, whether by way of election of remedy, deficiency judgment, or otherwise for any monies due hereunder, whether principal, interest, attorneys' fees or other. Nothing in this Section 31.A, however, shall be deemed or construed to affect the validity of this Deed of Trust or of any other instrument given to secure the Note.

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B. Notwithstanding the limitation on liability set forth in Section 31.A above, Beneficiary's exculpation of Trustor from personal liability for the repayment of the Indebtedness shall be void without notice in the event of: (i) any fraud by Trustor; (ii) a voluntary transfer or encumbrance of the Property by Trustor, or any direct or indirect beneficial ownership interest therein, in violation of the Loan Documents (after the expiration of any applicable notice and cure period); or (iii) Trustor's filing of a voluntary petition for reorganization under Title 11 of the United States Code (or under any other present or future law, domestic or foreign, relating to bankruptcy, insolvency, reorganization proceedings or otherwise similarly affecting the rights of creditors), unless, prior to filing, Trustor offers to enter into Beneficiary's choice of either an agreement to permit an uncontested foreclosure, or an agreement to deliver a deed in lieu of foreclosure, Beneficiary accepts Trustor's offer and the agreement is consummated within sixty (60) days of Beneficiary's acceptance of the offer. After Beneficiary accepts such an offer, default by Trustor in fulfilling the terms of the accepted offer (after the expiration of any applicable notice and cure period) shall trigger personal liability for the entire Indebtedness. No such offer shall be conditioned on any payment by Beneficiary, on the release of Trustor or any Guarantor from any obligation or liability under the Loan Documents or on any other concession. Trustor's liability for the Carveout Obligations shall survive foreclosure of this Deed of Trust (or the acquisition of the Property by Beneficiary by a deed in lieu of foreclosure) to the extent any Carveout Obligations remain outstanding. To the extent any of the Carveouts apply or this Deed of Trust otherwise contemplates personal liability of Trustor for the repayment of the Indebtedness, Trustor agrees to be personally liable for and pay any deficiency to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* Section 57-1-32 or other applicable law. Trustor further waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* Section 78B-5-802.

32. Trustor hereby represents, warrants and agrees that: (i) it is acting on its own behalf and that it is not an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title 1 of ERISA, nor a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code"; each of the foregoing hereinafter referred to collectively as a "Plan"); (ii) Trustor's assets do not constitute "plan assets" of one or more such Plans within the meaning of Department of Labor Regulation Section 2510.3-101; and (iii) it will not be reconstituted as a Plan or as an entity whose assets constitute "plan assets". Further, Trustor will not enter into any lease or occupancy agreement affecting any portion of the Property unless the tenant thereunder represents that it is not a plan or any entity where assets constitute such "plan assets."

33. Beneficiary's forbearance in pursuing or exercising one or more of its remedies shall not be deemed or construed to constitute a waiver of any default or any remedy, and no waiver by Beneficiary of any default, right or remedy on one occasion shall be construed as a waiver of that right or remedy on any subsequent occasion or as a waiver of any right or remedy thereafter

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existing. Beneficiary shall have the right at all times to enforce the provisions of the Note, this Deed of Trust or any of the other Loan Documents in strict accordance with the terms thereof. No failure by Beneficiary to pursue or exercise any of its rights or remedies, or insist upon strict compliance with any term or provision of the Note, this Deed of Trust or any of the other Loan Documents, and no custom or practice at variance with the terms of the Note, this Deed of Trust or any other any of the other Loan Documents, shall constitute a waiver by Beneficiary of the right to demand strict compliance with the terms and provisions of the Note, this Deed of Trust or of the other Loan Documents. Any consent or approval given by Beneficiary hereunder shall not be deemed to waive or render unnecessary the consent or approval to, or of, any subsequent similar act.

34. A. Trustor shall diligently comply with all deadlines affecting the Water Rights imposed by law or regulation or any Governmental Authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 34, the term "Governmental Authorities" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Tooele, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the Real Property.

B. Trustor 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 Trustor cannot place any quantity of water under the Water Rights to a beneficial use, Trustor 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. Trustor shall promptly provide the Lender 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. Trustor shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide the Lender with evidence of each such payment.

E. Trustor 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.

35. A. Notwithstanding anything to the contrary set forth herein, upon Beneficiary's written approval, Trustor shall have the right, on one (1) occasion during the term of the Note, to sell or transfer the Property. Beneficiary agrees to approve the transfer upon the satisfaction of the following conditions:

- i. At the time of such transfer Trustor is not in default under this Deed of Trust, the Note or any other Loan Document;

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- ii. Beneficiary shall receive a written request for its approval of the transfer at least sixty (60) days prior to the proposed transfer. The request shall specify the identity of the proposed transferee, the purchase price and the other terms of the transaction and shall be accompanied by a copy of the sale contract and financial statements, tax returns and organizational documents of the proposed transferee and its principals;
- iii. The proposed transferee shall fully and unconditionally assume Trustor's obligations and liabilities under the Note, this Deed of Trust and other Loan Documents, without modification, and shall execute an assumption agreement and such additional documentation as is reasonably satisfactory to Beneficiary in form and substance. Under the assumption agreement the transferee shall provide a representation of the purchase price paid for the Property;
- iv. A replacement guarantor having an aggregate net worth (not including the value of such party's equity in the Property) equal to or greater than \$20,000,000.00 with a minimum liquidity of \$2,000,000.00 and is otherwise acceptable to Beneficiary, shall execute the assumption agreement, or such other document as Beneficiary deems appropriate, in form and substance, whereby the replacement guarantor shall, from and after the date of the assumption and transfer, expressly, unconditionally and fully assume the obligations and liabilities of Guarantors and Indemnitors under the Environmental Indemnity Agreement and Separate Guaranty of Carveout Obligations or any other Loan Documents executed in connection with the Note;
- v. Trustor and Guarantors shall retain liability under the Note and Loan Documents for matters first arising before or in connection with the transfer and shall be released from liability under the Note and Loan Documents after the date of the transfer;
- vi. The proposed transferee shall execute any loan applications as required by Beneficiary and furnish to Beneficiary such other information and data required by Beneficiary;
- vii. The credit history, reputation, financial strength, ownership structure, and management expertise of the proposed transferee and its principals is satisfactory to Beneficiary in its sole but good faith discretion. Beneficiary expressly reserves the right to withhold its approval of the proposed transferee if the proposed transferee or any of its principals is or has been the subject of any bankruptcy, insolvency or similar proceeding;
- viii. Beneficiary shall receive an assumption fee equal to one percent (1%) of the unpaid principal balance of the Note outstanding at the time of the transfer together with an administrative fee in the amount of Five Hundred Dollars (\$500.00) and Trustor shall pay all of Beneficiary's costs and expenses incurred in connection with the proposed

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transfer (whether or not consummated), including but not limited to, title updates, endorsement charges, recording fees, applicable taxes and reasonable attorneys' fees and expenses (as determined by Beneficiary);

- ix. Beneficiary is provided with a true copy of the as-recorded deed or other instrument by which such transfer is made;
- x. Beneficiary is furnished with a satisfactory endorsement to Beneficiary's mortgagee's policy of title insurance insuring the continued validity and priority of this Deed of Trust following the assumption;
- xi. Beneficiary is furnished a letter from Trustor authorizing transfer to the transferee of any tax or insurance escrow funds then on deposit with Beneficiary in connection with this Loan;
- xii. Beneficiary is to be furnished with satisfactory evidence of appropriate fire and extended coverage insurance on the Property showing the proposed transferee as the named insured;
- xiii. Beneficiary determines that the unpaid principal balance of the Note secured hereby does not exceed sixty-five percent (65%) of (a) the purchase price of the Property or (b) if requested by Beneficiary, the appraised value of the Property at the time of transfer as determined by a then current and satisfactory MAI appraisal prepared, at Trustor's expense, by an appraiser selected by Beneficiary;
- xiv. Beneficiary determines in its reasonable discretion that the annual net operating income generated by Property at the time of the transfer equals or exceeds the product reached by multiplying 1.40 times the annual debt service payment due under the Note at the time of the transfer.

B. Notwithstanding anything set forth herein to the contrary, Beneficiary shall permit transfers of the direct or indirect beneficial interests in Trustor (a) by and among those persons or entities that are direct or indirect members, shareholders or partners of Trustor as of the date hereof (the "Current Owners"); (b) from the Current Owners to the members of the Current Owners immediate families, or trusts created for the benefit of said immediate family members, for the purpose of facilitating the bona fide estate planning of Current Owners; and (c) to a trustee of an estate upon the death of a Current Owner, provided that Trustor satisfies the following conditions:

- i. Except in the event of death, Trustor shall deliver advance notice of the proposed transfer, together with evidence reasonably satisfactory to Beneficiary that the proposed transfer would meet the requirements of this Section 34.B. Such evidence

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shall include a narrative description and detailed pre- and post- transfer organizational charts of Trustor;

- ii. No default or event of default shall exist at the time of the transfer;
- iii. The proposed transfer shall not result in any violation of the covenants of the Loan Documents relating to the management of the Property and Legal Control of Trustor;
- iv. Beneficiary determines, in its reasonable discretion, that the proposed transfer shall not have an adverse effect on the Property or Beneficiary's interest therein; and
- v. Trustor shall pay all out-of-pocket expenses incurred by Beneficiary in the review and processing of a proposed transfer.

C. Notwithstanding anything herein to the contrary, Beneficiary shall permit transfers of the direct and indirect beneficial ownership interests in Trustor, without notice to or the consent of Beneficiary, so long as:

- i. No default or event of default shall exist at the time of the transfer, which default has continued beyond the expiration of any applicable notice and cure periods;
- ii. CCA Acquisition Company, LLC and Steven H. Usdan retain Legal Control of Trustor after any such transfer;
- iii. Steven H. Usdan, his immediate family members or entities or trusts owned or controlled by Steven H. Usdan or his immediate family members continue to own not less than 50% of the ownership interest in Trustor either directly or indirectly through the entities comprising Trustor;
- iv. No such transfer shall result in violation of OFAC or other applicable laws; and
- v. No later than March 31 of each year, Trustor shall provide Beneficiary with a then current organizational chart and any other documentation reasonably requested by Beneficiary in connection therewith; provided that if Trustor fails to comply with this Section 35.C(v), then such failure shall not constitute a default hereunder unless such failure continues for more than thirty (30) days after Beneficiary provides Trustor written notice thereof.

36. A. Trustor is, and shall remain at all times, in full compliance with all applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, and any amendments or successors thereto and any applicable regulations promulgated thereunder (collectively, the "Financial Control Laws"), including but not limited to those related to money laundering offenses and related compliance and reporting requirements

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(including any money laundering offenses prohibited under the Money Laundering Control Act, 18 U.S.C. Sections 1956, 1957 and the Bank Secrecy Act, 31 U.S.C. Sections 5311 *et seq.*) and the Foreign Assets Control Regulations, 31 C.F.R. Section 500 *et seq.*

B. Trustor represents and warrants that: (i) Trustor is not a Barred Person (hereinafter defined); (ii) Trustor is not owned or controlled, directly or indirectly, by any Barred Person; and (iii) Trustor is not acting, directly or indirectly, for or on behalf of any Barred Person.

C. Trustor represents and warrants that it understands and has been advised by legal counsel on the requirements of the Financial Control Laws.

D. Under any provision of this Deed of Trust or any of the other loan documents where Beneficiary shall have the right to approve or consent to any particular action, including without limitation any (i) sale, transfer, assignment of the Property or of any direct or indirect ownership interest in Trustor, (ii) leasing of the Property, or any portion thereof, or (iii) incurring of additional financing secured by Property, or any portion thereof or by any direct or indirect ownership interest in Trustor, Beneficiary shall have the right to withhold such approval or consent, in its sole discretion, if the granting of such approval or consent could be construed as a violation of any of the Financial Control Laws.

E. Trustor covenants and agrees that it will upon request provide Beneficiary with (or cooperate with Beneficiary in obtaining) information required by Beneficiary for purposes of complying with any Financial Control Laws.

As used in this Deed of Trust, the term "Barred Person" shall mean: (i) any person, group or entity named as a "Specially Designated National and Blocked Person" or as a person who commits, threatens to commit, supports, or is associated with terrorism as designated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"); (ii) any person, group or entity named in the lists maintained by the United States Department of Commerce (Denied Persons and Entities); (iii) any government or citizen of any country that is subject to a United States Embargo identified in regulations promulgated by OFAC; and (iv) any person, group or entity named as a denied or blocked person or terrorist in any other list maintained by any agency of the United States government.

36. For purposes of *Utah Code Annotated* Sections 57-1-25 and 78B-6-901.5, Borrower agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

37. Trustor shall be solely responsible for any reasonable legal and/or processing fees and costs incurred or charged by Beneficiary in the event Trustor requests or requires Beneficiary to take action in connection with any loan servicing related matter arising during the

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term of the Loan. Trustor agrees to immediately reimburse Beneficiary upon Beneficiary's request for any such legal and/or processing fees and costs.

38. A. Trustor, within ten (10) business days after request by Beneficiary, shall furnish Beneficiary from time to time with a statement, duly acknowledged and certified, setting forth: (i) the amount of the original principal amount of the Note; (ii) the unpaid principal amount of the Note; (iii) the rate of interest in the Note; (iv) the date through which all installments of interest, commitment fees and/or principal have been paid; (v) any offsets or defenses to the payment of the amount outstanding under the Note, if any; (vi) that the Note and this Deed of Trust have not been modified or if modified, giving particulars of such modification; and (vii) such other information as shall be requested by Beneficiary.

B. Trustor, after request by Beneficiary, will use commercially reasonable efforts to obtain and furnish (within the time periods, if any, provided in the applicable leases or if no time period is so specified, within twenty (20) business days after request) Beneficiary from time to time with estoppel certificates from any tenants under then existing leases, which certificates shall be in form and substance as required by such leases, or if not required, then in form and substance reasonably satisfactory to Beneficiary.

39. The Indebtedness secured by this Deed of Trust is intended to include certain advances made by Beneficiary in the future whether such advances are obligatory or to be made at the option of Beneficiary. Such advances include any additional disbursements to Trustor and any obligations under agreements which specifically provide that such obligations are secured by this Deed of Trust. In addition, the indebtedness secured hereby shall include any amounts advanced to pay taxes, liens or other impositions of any kind or nature, to cure Trustor's defaults under the Loan Documents, or to pay the costs of collection and receivership. Accordingly, all such advances and obligations shall be equally secured with, and shall have the same priority as, the indebtedness evidenced by the Note, and shall be subject to all of the terms and provisions of this Deed of Trust.

40. Trustor shall indemnify, defend and hold Beneficiary harmless against: (i) any and all claims for brokerage, leasing, finder's or similar fees which may be made relating to the Property or the indebtedness secured hereby and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits costs and expenses (including Beneficiary's reasonable attorneys' fees, together with reasonable appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Beneficiary in connection with the indebtedness, this Deed of Trust, the Property or any part thereof, or the operation, maintenance and/or use thereof, or the exercise by Beneficiary of any rights or remedies granted to it under this Deed of Trust or pursuant to applicable law; provided, however, that nothing herein shall be construed to obligate Trustor to indemnify, defend and hold harmless Beneficiary from and against any of the foregoing which is imposed on or incurred by Beneficiary by reason of Beneficiary's or its authorized agent's or employee's willful misconduct or gross negligence. Trustor shall pay or reimburse Beneficiary, upon demand, for all costs and expenses, including

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appraisal and reappraisal costs of the Property and reasonable attorneys' fees, which Beneficiary may incur in connection with enforcing or interpreting the Note, this Deed of Trust, or any of the other Loan Documents (including all fees and costs incurred in enforcing or protecting the Note, this Deed of Trust, or any of the other Loan Documents in any bankruptcy proceeding), and attorneys' fees incurred by Beneficiary in any suit, action, legal proceeding or dispute of any kind in which Beneficiary is made a party or appears as party plaintiff or defendant, affecting the indebtedness secured hereby, the Note, this Trust Deed, any of the other Loan Documents, or the Property, or required to protect or sustain this Deed of Trust.

41. This Deed of Trust is made upon the conditions that if (i) all of the indebtedness secured hereby and obligations of Trustor hereunder, including all future advances and other future indebtednesses, obligations and liabilities included therein, are paid and performed in full, (ii) Trustor reimburses Beneficiary for any amounts Beneficiary shall have paid in respect of liens, impositions, prior mortgages, insurance premiums, repairing or maintaining the Property, performing Trustor's obligations with respect to environmental matters, and for any other advancements hereunder, and interest thereon, (iii) Trustor fulfills all of Trustor's other obligations contained in the Loan Documents, (iv) Beneficiary has no obligation to extend any further credit to or for the account of Trustor, and (v) no contingent liability of Trustor secured by this Deed of Trust then exists, Beneficiary shall, at Trustor's expense, execute, deliver and record in the real property records a written instrument of termination or release.

42. There shall be no merger of this Deed of Trust or any other instrument securing the Note with the fee estate of the Property by reason of the fact that the same party holds or acquires, directly or indirectly, the Note secured hereby, this Deed of Trust or any other instrument securing the Note and is simultaneously the owner of the fee estate of the Real Estate or thereafter acquires the fee estate of the Real Estate, or by reason of the fact that the same party may hold or acquire, directly or indirectly, the fee estate of the Property and at the same time be the owner and holder of the Note, this Deed of Trust or any other instruments securing the Note or thereafter acquire the Note, this Deed of Trust or any other instrument securing the Note. Without limiting the foregoing provisions, there shall be no merger of any lease of leasehold estate with the fee estate in the Property unless and until all persons then having an interest in such fee estate and all persons, including Beneficiary, then having an interest in any lease or leasehold estate and the fee estate or any improvements located on the Property, shall join in a written instrument effecting such merger and shall duly record the same.

43. TRUSTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT OR ANY ACTS OR OMISSIONS OF BENEFICIARY, ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS IN CONNECTION THEREWITH.

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44. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THE COVENANTS, CONDITIONS AND AGREEMENTS HEREIN CONTAINED shall bind, and the benefits and advantages hereof shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used herein, the singular number shall include the plural and conversely, and the use of any gender shall be applicable to all genders. Wherever the term "Beneficiary" is used herein it shall include the legal holder or holders of said Note or the indebtedness secured hereby.

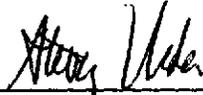
SEE NEXT PAGE FOR SIGNATURES

IN WITNESS WHEREOF, Trustor has signed, sealed and delivered this Deed of Trust the day and year first above written.

**TRUSTOR:**

**CCA-TOOELE TOWNE CENTER, LLC**, a  
Delaware limited liability company

By: CCA Acquisition Company, LLC, a California  
limited liability company, its Managing Member

By:   
Name: Steven H. Usdan  
Title: Managing Member

ACKNOWLEDGMENT

*A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that*

State of California }  
County of \_\_\_\_\_ }

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary  
Public, \_\_\_\_\_ personally appeared

\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

SEE ATTACHED  
CA CERTIFICATE

SIGNATURE \_\_\_\_\_

PLACE NOTARY SEAL ABOVE

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of LOS ANGELES )

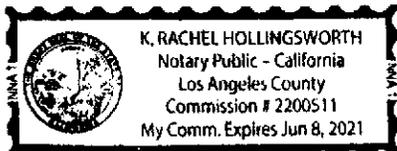
On FEBRUARY 15, 2019 before me, K. RACHEL HOLLINGSWORTH, NOTARY PUBLIC.  
*Date Here Insert Name and Title of the Officer*

personally appeared STEVEN H USDAN aka STEVEN USDAN  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: *[Handwritten Signature]*  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF REAL PROPERTY**

That certain real property located in Tooele County, Utah, and more particularly described as follows:

**PARCEL 1:**

All of Lot 1, TOOELE TOWN CENTER NO. 3, according to the official plat thereof, filed in the office of the Tooele County Recorder on March 21, 2005 in Plat Book 15 at Page 38 and as Entry No. 237631 in Book 1010 at Page 54.

**PARCEL 2:**

All of Lot 4, TOOELE TOWN CENTER, according to the official plat thereof, filed in the office of the Tooele County Recorder on August 14, 2000 in Plat Book 13 at Page 73 and as Entry No. 151216 in Book 634 at Page 449.

**PARCEL 3:**

All of Lot 2, TOOELE TOWN CENTER NO. 2, according to the official plat thereof, filed in the office of the Tooele County Recorder on March 22, 2001 in Plat Book 13 at Page 98 and as Entry No. 160861 in Book 668 at Page 692.

**PARCEL 4:**

All of Lot 7, TOOELE TOWN CENTER, according to the official plat thereof, filed in the office of the Tooele County Recorder on August 14, 2000 in Plat Book 13 at Page 73 and as Entry No. 151216 in Book 634 at Page 449.

**PARCEL 5:**

All of Lot 1, TOOELE TOWN CENTER NO. 4, according to the official plat thereof, filed in the office of the Tooele County Recorder on February 9, 2007 in Plat Book 16 at Page 33 and as Entry No. 277812.

**PARCEL 6:**

All of Lot 4, TOOELE TOWN CENTER NO. 3, according to the official plat thereof, filed in the office of the Tooele County Recorder on March 21, 2005 in Plat Book 15 at Page 38 and as Entry No. 237631 in Book 1010 at Page 54.

**PARCEL 7:**

The common easements as shown in that Grant of Easements, Declaration of Restrictions and Common Facilities Maintenance Agreement recorded December 16, 1999 as Entry No. 141401 in Book 602 at Page 330 and as amended by that certain First Amendment to Grant of Easements, Declaration of Restrictions and Common Facilities Maintenance Agreement recorded April 9, 2003 as Entry No. 199553 in Book 838 at Page 871 and Second Amendment to Grant of Easements, Declaration of Restrictions and Common Facilities Maintenance Agreement recorded May 17, 2004 as Entry No. 223299 in Book 945 at Page 261 of official records.