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B: 1424 P: 315 Fee \$59.00  
Debbie B. Johnson, Iron County Recorder - Page 1 of 23  
09/21/2018 01:26:30 PM By: AMERICAN FIRST ESCROW & TITLE

**This document was prepared by  
And return recorded document to:  
Andrew E. Kolb, Esq.  
Vanek, Larson & Kolb, LLC  
200 W. Main Street  
St. Charles, IL 60174**

**MORTGAGE**

Dated September 1, 2018

in the original principal amount of

\$3,900,000.00

executed by:

Art and Vada Armbrust Family Properties, LLC, an Illinois Limited Liability Company

and

Vada Armbrust, Trustee of the Arthur A. Armbrust Trust dated April 20, 2006

in favor of:

MF-UTAH, LLC, a South Dakota limited liability company

**Property Address:**

436 acres MOL Cedar City, Utah

**Parcel Numbers:**

B-1857-0002-0000

B-1857-0003-0000

B-1857-0004-0000

B-1857-0005-0000

B-1857-0027-0000

**MORTGAGE**

THIS MORTGAGE (hereinafter "Mortgage") is made as of this 1<sup>st</sup> day of September, 2018 by Art and Vada Armbrust Family Properties, LLC, an Illinois limited liability company, with an address at 909 Deerpath Court, Wheaton, Illinois 60187 and Vada Armbrust, Trustee of the Arthur A. Armbrust Trust dated April 20, 2006 (the "Trust"). The Trust together with Armbrust Family Properties, LLC collectively shall be referred to as the ("Mortgagor"), in favor of MF-UTAH, LLC, a South Dakota limited liability company ("Mortgagee").

**RECITALS:**

A. Mortgagor, jointly and severally, is indebted to Mortgagee in the Principal Sum of Three Million Nine Hundred Thousand and no/100 Dollars (\$3,900,000.00) , as evidenced by a certain Secured Promissory Note, bearing even date herewith (together with any modifications, extensions, renewals, replacements or refinances thereof, the "Note") executed by Mortgagor and delivered to Mortgagee, evidencing a certain commercial real estate loan (the "Loan") providing for payment of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on the Maturity Date as defined in such Note.

B. As an express condition precedent and inducement to Mortgagee to make such Loan, Mortgagor hereby agrees to grant and pledge to Mortgagee this Mortgage as to the Property and Mortgaged Property identified herein to secure all repayment obligations and indebtedness of such Note and Loan or so much thereof as may be disbursed and remain unpaid from time to time pursuant to the terms of a certain Master Loan Agreement of even date herewith by and between Mortgagor and Mortgagee (the "Loan Agreement") as well as all other amounts, obligations and liabilities due or to become due Mortgagee under all other instruments and documents related to this Mortgage and the Note (the Loan Agreement, the Note, and this Mortgage collectively referred to as the "Loan Documents"); all amounts, sums and expenses payable hereunder by Mortgagee according to the terms hereof and all other obligations and liabilities of Mortgagor under this Mortgage, the Note and the other Loan Documents together with all interest on the said indebtedness, obligations, liabilities, amounts, sums and expenses (all of the aforesaid hereinafter collectively referred to as the "Indebtedness") and accordingly, Mortgagor hereby mortgages, grants, bargains, sells, covenants, conveys, warrants, aliens, demises, releases, assigns, sets over and confirms unto Mortgagee, its successors and assigns:

All that certain real property legally described on Exhibit A attached hereto and by this reference made a part hereof (collectively the "Property").

**TOGETHER** with Mortgagor's interest in and to all the real property and improvements (including without limitation infrastructure improvements) now or hereafter erected, placed upon or installed on the Property ("Improvements"), and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter made a part of the Property, together with all replacements thereof and additions thereto.

(the Property and all of the other aforesaid property interests encumbered and conveyed hereby are hereinafter referred to as the "**Mortgaged Property**")

**TO HAVE AND TO HOLD** unto Mortgagee and its successors and assigns until the Indebtedness is paid and satisfied in full.

**ARTICLE I  
COVENANTS OF MORTGAGOR**

Mortgagor further covenants and agrees with Mortgagee as follows, incorporating the above-referenced recitals in full:

**Section 1.01. Payment of the Indebtedness.** Mortgagor will pay the Indebtedness in accordance with terms of the Note and in the other Loan Documents, all in the coin and currency of the United States of America that is legal tender for the payment of public and private debts. **All payment and performance obligations of the Mortgagor under the terms and conditions of this Mortgage shall be jointly and severally imposed upon both: (a) Art & Vada Armbrust Family Properties, LLC; and (b) the Trust.**

**Section 1.02. Title to the Mortgaged Property.** Mortgagor represents and covenants that: (i) Mortgagor has good and marketable title to the Mortgaged Property; (ii) Mortgagor has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth, (iii) this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property; and (iv) Mortgagor will preserve such title, and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

**Section 1.03. Maintenance of the Mortgaged Property.** Mortgagor shall comply with the requirements, regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court having competent jurisdiction over the Mortgaged Property (collectively, the "Requirements" and individually a "Requirement") within thirty (30) days after an order containing such Requirement has been issued by any such authority or such longer period as may be required as long as Mortgagor has commenced and is diligently proceeding to compliance, and shall permit Mortgagee, upon at least 2 days' prior written notice to Mortgagor (unless there is an Event of Default, as hereinafter defined, which is continuing) to enter upon the Mortgaged Property at reasonable times and inspect the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, threaten, commit, permit or suffer to occur any waste, material alteration which either modifies the use or general nature of the occupancy of the Mortgaged Property or reduces the value of the Mortgaged Property, demolition or removal of the Mortgaged Property or any part thereof; **provided, however,** That notwithstanding anything herein to the contrary or within the Loan Documents, Mortgagor shall not be permitted to sell all or any portion of the Mortgaged Property without the express consent of the Lender, which consent may be withheld by the Lender in its sole and absolute discretion for any reason or for no reason.

**Section 1.04. Insurance.** Mortgagor obtain insurance insuring the Mortgaged Property and the improvements hereafter erected on the Mortgaged Property at the time such improvements are erected, insured by carriers at all times reasonably satisfactory to Mortgagee against loss by fire, hazards included within the term "extended coverage," rent loss, and such other hazards, casualties, liabilities and contingencies (including, general liability insurance) as Mortgagee shall reasonably require and in such amounts and for such periods as Mortgagee shall reasonably require. In the event the Mortgaged Property is or at any time hereafter may be designated to be in a flood hazard area, Mortgagor agrees to maintain flood insurance policies in form and amounts reasonably satisfactory to Mortgagee and issued by companies reasonably approved by Mortgagee. All premiums on insurance policies shall be paid, at Mortgagee's option, in the manner under Section 1.14 hereof, or by Mortgagor making payments, when due, directly to the carrier, or in such other manner as Mortgagee may designate in writing.

All insurance policies and renewals thereof shall be in a form reasonably acceptable to Mortgagee and shall include a standard mortgage clause in favor of and in form reasonably acceptable to Mortgagee. All insurance required under this Mortgage or the Loan Documents shall require written notice to the Mortgagee at least 30 days prior to cancellation of such insurance by the Mortgagor and/or carrier. Mortgagor shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums and a certificate of insurance for each required

policy. At least thirty (30) days prior to the expiration date of a policy, Mortgagor shall deliver to Mortgagee a renewal policy or certificate of renewal in form satisfactory to Mortgagee.

In the event of loss, Mortgagor shall give written notice to the insurance carrier and to Mortgagee as soon as is reasonably possible. Mortgagee may act with Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this Section 1.04 shall require Mortgagee to incur any expense or take any action hereunder. Mortgagor further authorizes Mortgagee, at Mortgagee's option, (a) to hold with interest the balance of such proceeds to be used to reimburse the cost of reconstruction or repair of the Mortgaged Property or (b) only if an Event of Default has occurred hereunder and has continued beyond any applicable grace or cure period, to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due.

If the insurance proceeds are held by Mortgagee to reimburse Mortgagor for the costs of restoration and repair of the Mortgaged Property, the Mortgaged Property shall be restored to the equivalent of its original condition or such other condition as Mortgagee may approve in writing. Mortgagee may, at Mortgagee's option, condition disbursement of said proceeds on Mortgagee's reasonable approval of such plans and specifications of an architect reasonably satisfactory to Mortgagee, contractor's cost estimates, architect's certificate, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Mortgagee may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not be subject to any prepayment penalty and shall not extend or postpone the due dates of the monthly installments referred to in Section 1.01 hereof or change the amounts of such installments. If the Mortgaged Property is sold pursuant to Article II hereof or if Mortgagee acquires title to the Mortgaged Property, Mortgagee shall have all of the rights, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

**Section 1.05. Maintenance of Existence.** Mortgagor will, so long as it is owner of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation, and will comply with all Requirements applicable to Mortgagor or to the Mortgaged Property or any part thereof.

**Section 1.06. Taxes and Other Charges.** (a) Mortgagor shall pay and discharge when due all taxes of every kind and nature, water rates, sewer rents and assessments, levies, permits, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof (collectively, the "Impositions") and, unless Mortgagor is making monthly deposits with Mortgagee in accordance with Section 1.14 hereof with respect to any such amount, Mortgagor shall exhibit to Mortgagee, upon Mortgagee's request, within five (5) business days after such request, validated receipts showing the payment of such Impositions. Should Mortgagor default in the payment of any of the foregoing Impositions, after written notice and opportunity to cure to Mortgagor, Mortgagee may, but shall not be obligated to, pay the same or any part thereof and Mortgagor shall, on demand, reimburse Mortgagee for all amounts so paid together with interest computed at the Default Rate.

(b) Nothing in this Section 1.06 shall require the payment or discharge of any obligation imposed upon Mortgagor by subparagraph (a) of this Section 1.06 so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings, which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same, provided that (i) Mortgagor has notified Mortgagee in writing

in advance of its intent to contest such taxes, and (ii) during such contest Mortgagee shall, at the option of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagee's obligation hereunder and of any additional interest, charge, penalty or expense arising from or incurred as a result of such contest.

Section 1.07. Mechanics' and Other Liens. (a) Mortgagee shall pay, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, Mortgagee shall do, or cause to be done, at the cost of Mortgagee and without expense to Mortgagee, everything necessary to fully preserve the lien of this Mortgage. If Mortgagee fails to make payment of any such claims and demands, Mortgagee may, but shall not be obligated to, make payment thereof, and Mortgagee shall, upon demand, reimburse Mortgagee for all sums so expended together with interest computed at the Default Rate.

(b) Nothing in this Section 1.07 shall require the payment or discharge of an obligation imposed upon Mortgagee by subparagraph (a) of this Section 1.07 so long as Mortgagee shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that (i) Mortgagee has notified Mortgagee in writing, in advance, of its intent to contest such liens, and (ii) during such contest Mortgagee shall, at the option of Mortgagee, provide security satisfactory to Mortgagee (in Mortgagee's sole discretion), assuring the discharge of Mortgagee's obligations hereunder and of any additional interest, charge or expense arising from or incurred as a result of such contest.

Section 1.08. Condemnation Awards. The proceeds of any award or claim for damages, direct or consequential, payable to Mortgagee in connection with any condemnation or other taking of all of any part of the Mortgaged Property, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or to require Mortgagee to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagee for costs incurred in connection with the rebuilding or restoring the Mortgaged Property or the improvements thereon. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagee shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus that may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the Indebtedness, or be paid to any other party entitled thereto.

Section 1.09. Authorization. Mortgagee hereby covenants and represents that the execution and delivery of this Mortgage, the Note and all of the other Loan Documents executed by Mortgagee have been duly authorized and that there is no provision in any instrument or document to which Mortgagee is a party or by which Mortgagee may be bound that requires further consent for such action by any other entity or person; it is duly organized, validly existing and in good standing under the laws of the state of its formation, and has (a) all necessary licenses, authorizations, registrations and approvals and (b) full power and authority to own its properties and carry on its business as presently conducted; and the execution and delivery by and performance of its obligations under this Mortgage, the Note and the other Loan Documents will not result in Mortgagee being in default under any provision of any instrument or document to which Mortgagee is a party or by which Mortgagee may be bound, or any law, order, writ, injunction or decree of any court or governmental authority.

Section 1.10. Costs of Defending and Upholding the Lien. If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary to defend or uphold the lien of this Mortgage, Mortgagee shall, on demand, reimburse Mortgagee for all expenses (including, without

limitation, reasonable attorneys' fees and costs) incurred by Mortgagee in any such action or proceeding to the extent that Mortgagee is the successful party in any such action or proceeding.

Section 1.11. Additional Advances and Disbursements. Except as otherwise may be permitted hereunder, Mortgagor shall pay when due all payments and charges on all liens, encumbrances, ground and other leases, and security interests which may be or become superior or inferior to the lien of this Mortgage, and to the extent such payments or charges are due to a default by Mortgagor, Mortgagee shall have the right, but shall not be obligated, after written notice to Mortgagor and opportunity to cure, to pay such payments and charges and Mortgagor shall, on demand, reimburse Mortgagee for amounts so paid and all costs and expenses incurred in connection therewith, together with interest thereon, at the Default Rate from the date such payments and charges are so advanced until the same are paid to Mortgagee. In addition, upon default of Mortgagor in the performance of any other terms, covenants, conditions or obligations by it to be performed under any such prior or subordinate lien, encumbrance, lease or security interest following any applicable grace or cure period therein provided, Mortgagee shall have the right, but not the obligation, to cure such default in the name of and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee pursuant to this Section 1.11 or as otherwise provided under the terms and provisions of this Mortgage or under applicable law shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at a rate equivalent to the Default Rate.

Section 1.12. Costs of Enforcement. Mortgagor agrees to bear and pay all expenses (including reasonable attorneys' fees and costs) of or incidental to the enforcement of any provision hereof, or the enforcement, compromise or settlement of this Mortgage or the Indebtedness, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise provide that Mortgagee is successful in such enforcement action. All rights and remedies of Mortgagee shall be cumulative and may be exercised singly or concurrently.

Section 1.13. Mortgage Taxes. Mortgagor shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Mortgagee by reason of its ownership of the Note or this Mortgage or any mortgage supplemental hereto, any security instrument with respect to any fixtures or personal property owned by Mortgagor at the Mortgaged Property and any instrument of further assurance, other than income, franchise and doing business taxes, and shall pay all stamp taxes and other taxes required to be paid on the Note. If Mortgagor fails to make such payment within five (5) days after written notice thereof from Mortgagee, then Mortgagee shall have the right, but shall not be obligated, to pay the amount due, and Mortgagor shall, on demand, reimburse Mortgagee for said amount, together with interest at the Default Rate computed from the date of payment by Mortgagee.

Section 1.14. Escrow of Funds for Taxes, Insurance and Other Charges. Intentionally omitted.

Section 1.15. Acceleration in Case of Mortgagor's Insolvency. If Mortgagor shall voluntarily file a petition under the Federal Bankruptcy Code, as such Code may from time to time be amended, or under similar or successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in any involuntary proceeding admitting insolvency or inability to pay debts, or if Mortgagor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Mortgagor, or if Mortgagor shall be adjudged a bankrupt or if a trustee or receiver shall be appointed for Mortgagor or Mortgagor's property, or if any part of the Mortgaged Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Mortgagor shall make an arrangement for the benefit of Mortgagor's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Mortgagor's assets and such seizure is not discharged within ten days, then Mortgagee may, at Mortgagee's option, declare all the sums secured by this Mortgage to be immediately due and payable without prior notice to Mortgagor, and Mortgagee may invoke any remedies permitted by Article II of this Mortgage. Any attorneys' fees and other expenses incurred by Mortgagee in connection with Mortgagor's

bankruptcy or any of the other aforesaid events shall be additional indebtedness of Mortgagor secured by this Mortgage. For purposes of this Section 1.15, the term "Mortgagor" shall include any beneficiary of Mortgage if Mortgagor is a land trustee.

Section 1.16. Restrictive Covenants. Mortgagor agrees that in determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor in owning and developing property such as the Mortgaged Property, found them acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Mortgaged Property which is Mortgagee's primary security for the Note. Mortgagor has been ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and having bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by, among other things, making new loans at such rates.

Section 1.17. Estoppel Certificate. Mortgagor, within three (3) business days upon request in person or within five (5) business days upon request by mail, shall furnish to Mortgagee a written statement, duly acknowledged, setting forth the amount due on this Mortgage, the terms of payment and maturity date of the Note, the date to which interest has been paid, whether any known offsets or defenses exist against the Indebtedness and, if any are alleged to exist, the nature thereof shall be set forth in detail. In the absence of an Event of Default, Mortgagor shall not be required to execute or deliver more than one (1) Estoppel Certificate in any twelve-month period.

Section 1.18. Indemnity. Each of Mortgagor and Mortgagee hereby represent and covenant to the other that neither Mortgagor nor Mortgagee has dealt with any broker, finder or like agent in connection with the Indebtedness. In addition to any other indemnity provisions of this Mortgage, each of Mortgagor and Mortgagee will indemnify, defend, and hold the other harmless against any loss, liability, cost or expense, including, without limitation, any judgments, attorney's fees and costs arising out of or relating to any claim by any such broker, finder or like agent who dealt with Mortgagor or Mortgagee, respectively.

Section 1.19. Mortgagee's Performance of Defaulted Acts; Protective Advances; Subrogation; Reliance on Bills. In the event Mortgagor fails to perform any of its covenants and agreements herein or the Note or any of the other Loan Documents, Mortgagee may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient and may, but need not, make full or partial payments of principal or interest on any Prior Encumbrances (as hereinafter defined), if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof or redeem from any tax sale on, forfeiture affecting the Mortgaged Property or contest any tax or assessment.

All advances, disbursements and expenditures (collectively "advances") made by Mortgagee before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate, are hereinafter referred to as "Protective Advances";

- (a) advances pursuant to this Section 1.19 and Sections 1.04, 1.07, 1.11 and 1.13 of this Mortgage;
- (b) advances in accordance with the terms of this Mortgage to: (i) protect, preserve or restore the Mortgaged Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage.
- (c) payments of (i) installments of principal, interest or other obligations in accordance with the terms of any Prior Encumbrance; (ii) installments of real estate taxes and other Impositions; (iii) other obligations authorized by this Mortgage; or (iv) any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section 1.19 of this Mortgage and in accordance with applicable law;

- (d) attorneys' fees and other costs incurred in connection with the foreclosure of this Mortgage as authorized in accordance with applicable law in connection with any other litigation or administrative proceeding to which Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any such suit or proceeding, including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Mortgaged Property;
- (e) Mortgagee's fees and costs arising between the date of entry of judgment of foreclosure and the date of confirmation hearing;
- (d) Mortgagee's advances of any amount required to make up a deficiency in deposits for installments of Impositions, as required of Mortgagor by Section 1.06 of this Mortgage;
- (e) expenses deductible from proceeds of sale as authorized under applicable laws;
- (f) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, without regard to the limitation to maintaining of insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property; (ii) payments required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; and (iii) operating deficits incurred by Mortgagee in possession or reimbursed by Mortgagee to any receiver, unless caused by the gross negligence, willful misconduct or violation of law by the Mortgagee in Possession or the receiver, as applicable. This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to applicable law.

The Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the applicable law, be included in:

- (a) determination of the amount of indebtedness secured by this Mortgage at any time;
- (b) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, it being hereby agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (c) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem;
- (d) determination of amounts deductible from sale proceeds;
- (e) determination of the application of income in the hands of any receiver or mortgagee in possession; and



(f) computation of any deficiency judgment.

All moneys paid for Protective Advances shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. Inaction of Mortgagee shall not be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any senior mortgage or any other lien or encumbrance upon the Mortgaged Property or any part thereof on a parity with or prior or superior to the lien hereof (each, a "Prior Encumbrance"), then as additional security hereunder Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

Section 1.20. Environmental Matters

a. Definitions. As used herein, the following terms shall have the following meanings:

i. **"Environmental Laws"** means all federal, state and local statutes, laws, rules, regulations, ordinances, requirements, or rules of common law, including, but not limited to, those listed or referred to in paragraph (b) below, any judicial or administrative interpretations thereof, and any judicial and administrative consent decrees, orders or judgments, whether now existing or hereinafter promulgated, relating to public health and safety and protection of the environment

ii. **"Hazardous Material"** means without limitation, above or underground storage tanks, flammables, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides and toxic or hazardous substances or materials of any kind, including without limitations, substances now or hereafter defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the following statutes, as amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9601, *et seq.*, "**CERCLA**") as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Sec. 9671 *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. Sec. 1801 *et seq.*); the Toxic Substances Control Act (15 U.S.C. Sec. 2601, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6901, *et seq.*); the Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*); the Clean Water Act (33 U.S.C. Sec. 1251, *et seq.*); the Rivers and Harbors Act (33 U.S.C. Sec. 401 *et seq.*); the Illinois Environmental Protection Act (WEPA) and any so-called "**Superlien Law**", and in the regulations promulgated pursuant thereto, and any other applicable federal, state or local law, common law, code, rule, regulation, order, policy or ordinance, presently in effect or hereafter enacted, promulgated or implemented. Nothing contained herein shall prevent the storage, use and disposal on the Mortgaged Property of cleaning compounds in amounts and concentrations usually used in building maintenance in accordance with the requirements of Environmental laws.

iii. **"Environmental Liability"** means any losses, liabilities, obligations, penalties, charges, fees, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, response costs, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee, and its affiliates, shareholders, directors, officers, employees, and agents (collectively "**Affiliates**") in connection with or arising from:

- (1) any Hazardous Material on, in, under or affecting all or any portion of the Mortgaged Property, the groundwater, or any surrounding areas;
- (2) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this section of a material nature;
- (3) any violation or claim of violation by Mortgagor of any Environmental Laws;
- (4) the imposition of any lien for damages caused by, or the recovery of any costs for, the cleanup, release or threatened release of Hazardous Material.

- (5) the costs of removal of any and all Hazardous Materials from all or any portion of the Mortgaged Property or any surrounding areas; and
- (6) costs incurred to comply in connection with all or any portion of the Mortgaged Property or any surrounding areas, with all Environmental Laws with respect to Hazardous Materials.

**Representations and Warranties.** Mortgagor hereby represents and warrants to Mortgagee that to Mortgagor's actual knowledge without independent investigation or inquiry:

i. **Compliance.** The Mortgaged Property (including underlying groundwater and areas leased to tenants, if any), and the use and operation thereof, are currently in compliance with all applicable Environmental Laws. All required governmental permits and licenses are in effect, and Mortgagor is in compliance therewith. All Hazardous Material generated or handled on the Mortgaged Property, if any, has been disposed of in a lawful manner.

ii. **Absence of Hazardous Material.** No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material is occurring on or from the Mortgaged Property. No underground storage tanks (including petroleum storage tanks) are present on or under the Mortgaged Property.

iii. **Proceedings and Actions.** There are no pending or threatened: (a) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Mortgaged Property, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (b) liens or governmental actions, notices of violations, notices of non-compliance or other proceedings of any kind that could impair the value of the Mortgaged Property, or the priority of the lien of this Mortgage, or of any of the other documents or instruments now or hereafter given as security for the indebtedness secured by this Mortgage.

**Mortgagor's Covenants.** Mortgagor hereby covenants and agrees with Mortgagee as follows:

i. **Compliance.** The Mortgaged Property and the use and operation thereof shall comply with all Environmental Laws. All required governmental permits and licenses shall remain in effect and Mortgagor shall comply therewith. All Hazardous Material present, handled or generated on the Mortgaged Property will be disposed in a lawful manner. Mortgagor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Mortgaged Property. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

ii. **Absence of Hazardous Material.** Except as otherwise disclosed in the Environmental Reports provided by Mortgagor to the Mortgagee prior to the recording of this Mortgage and except as other disclosed in the Environmental Report obtained by Mortgagee prior to the recording of this Mortgage, no Hazardous Material shall be introduced to or handled on the Mortgaged Property.

iii. **Proceedings and Actions.** Mortgagor shall immediately notify Mortgagee and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the environmental condition of the Mortgaged Property or compliance with Environmental Laws. Mortgagor shall promptly cure and have dismissed any such actions and

proceedings to the satisfaction of Mortgagee. Mortgagor shall keep the Mortgaged Property free of any lien imposed pursuant to any Environmental Laws.

iv. Environmental Audit. Mortgagor shall provide such reasonable information and certifications that Mortgagee may request from time to time to insure Mortgagor's compliance with this section. To investigate Mortgagor's compliance with Environmental Laws and with this section, Mortgagee shall have the right, but not the obligation, to enter upon the Mortgaged Property, take samples, review Mortgagor's books and records, interview Mortgagor's employees and officers, and conduct similar activities. Mortgagor shall cooperate in the conduct of such an audit.

d. Mortgagee's Right to Rely. Mortgagee is entitled to rely upon Mortgagor's representations and warranties contained in this section despite any independent investigations by Mortgagee or its consultants. Mortgagor shall take actions to determine for itself, and to remain aware of, the environmental condition of the Mortgaged Property and shall have no right to rely upon any environmental investigations or findings made by Mortgagee or its consultants.

d. Indemnification. Mortgagor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to Mortgagee and at Mortgagor's sole cost) and hold Mortgagee and its Affiliates free and harmless from and against Mortgagee's Environmental Liability. The foregoing indemnity shall survive satisfaction of the loan evidenced by the Note and any transfer of the Mortgaged Property to Mortgagee by voluntary transfer, foreclosure or by a deed in lieu of foreclosure. This indemnification shall not apply to any liability incurred by Mortgagee as a direct result of affirmative actions of Mortgagee as owner and operator of the Mortgaged Property after Mortgagee has acquired title to the Mortgaged Property and which actions are the sole and direct cause of damage resulting from the introduction and initial release of a Hazardous Material upon the Mortgaged Property by Mortgagee; *provided*, however, this indemnity shall otherwise remain in full force and effect, including, without limitation, with respect to Hazardous Material which is discovered or released at the Mortgaged Property after Mortgagee acquires title to the Mortgaged Property but which was not actually introduced at the Mortgaged Property by Mortgagee, with respect to the continuing migration or release of Hazardous Material previously introduced at or near the Mortgaged Property and with respect to all substances which may be Hazardous Material and which are situated at the Mortgaged Property prior to Mortgagee taking title but are removed by Mortgagee subsequent to such date. Notwithstanding any provision to the contrary set forth herein Mortgagor shall not be liable for any Environmental Liability suffered or incurred as a result of (i) any Hazardous Materials having been brought onto the Mortgaged Property after Mortgagee or its agents or nominees has taken title to or actual possession and control of the Mortgaged Property, provided that neither Mortgagor nor Mortgagor's agents took any part in the introduction of such Hazardous Materials onto the Mortgaged Property, or (ii) any negligence on the part of Mortgagee or its agents or nominees in removing any Hazardous Materials from the Mortgaged Property, to the extent of any additional Environmental Liability resulting therefrom.

e. Waiver. Mortgagor, its successors and assigns, hereby waives, releases and agrees not to make any claim or bring any cost recovery action against Mortgagee under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Mortgagee is strictly liable under any Environmental Laws, Mortgagor's obligation to Mortgagee under this indemnity (to the extent limited by the foregoing paragraph (c)) shall likewise be without regard to fault on the part of Mortgagor with respect to the violation or condition which results in liability to Mortgagee.

Section 1.21 Inspection. Upon at least two business days' prior written notice to Mortgagor, Mortgagee may make or cause to be made entries upon and inspections of the Mortgaged Property.

Section 1.22 Books and Records. Mortgagor shall keep and maintain at all times at Mortgagor's address stated below, or such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Mortgaged Property and copies of all written contracts, leases and other instruments which affect the Mortgaged Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any time by Mortgagee. Mortgagor shall, within ninety (90) days after the end of each fiscal year of Mortgagor, furnish to Mortgagee financial and operating statements of the Mortgaged Property for such fiscal year, in reasonable detail, and in any event including such itemized statements of receipts and disbursements as shall enable Mortgagee to determine whether an Event of Default then exists. Such financial and operating statements shall be prepared at Mortgagor's expense in a manner reasonably acceptable to Mortgagee, and shall include a statement as to whether or not an Event of Default exists hereunder.

Section 1.23 (Intentionally omitted).

Section 1.24. Indemnification. Except for the gross negligence, willful misconduct or violation of applicable law with respect to the Mortgaged Property by Mortgagee, Mortgagor agrees to indemnify and hold Mortgagee harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including attorneys' fees), arising directly or indirectly, in whole or in part, out of the negligent or willful acts and omissions of Mortgagor, (or breach of the Loan Documents) or any of its officers, directors, agents, subagents, or employees, in connection with this Mortgage or as a result of (a) ownership of the Mortgaged Property or any interest therein or receipt of any rent or other sum therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (c) any use, non-use or condition of the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (d) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; or (e) the performance of any labor or services or the furnishing of any materials or other property with respect to the Mortgaged Property or any part thereof. Any amounts payable to the Mortgagee under this paragraph which are not paid within ten (10) days after written demand therefor by the Mortgagee shall bear interest at the Default Rate defined in the Note. The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

## ARTICLE II DEFAULT AND REMEDIES

Section 2.01. Events of Default. The occurrence of any of the following events shall constitute an Event of Default under this Mortgage (subject to any applicable notice and/or cure periods specifically set forth herein or in the other Loan Documents):

- (a) default in the payment or performance of any of the other monetary or non-monetary terms, covenants or conditions contained in this Mortgage or in any of the Loan Documents; ;
- (b) if any material representation or warranty made herein or any other Loan Documents proves to be untrue or misleading in any material respect when made; or
- (c) if Mortgagor ceases to do business or terminates its business as presently conducted for any reason whatsoever, or
- (d) the occurrence of any "Event of Default" as such term is defined in the Note, the Loan Agreement or any of the other Loan Documents, which remains uncured after any applicable cure period.

Anything to the contrary set forth herein notwithstanding, Mortgagor shall be afforded five (5) days after Mortgagee's written notice to cure any monetary default and thirty (30) days after Lender's written notice to cure any non-monetary default (or such longer cure period that is specified in any Note that is subject to payment default with respect to the Loan) (provided such non-monetary default, by its nature, is curable), or such longer period if Mortgagor cannot reasonably complete the cure in such thirty (30) day period and Mortgagor has commenced and is diligently proceeding to cure within the thirty (30) day period.

**Section 2.02. Remedies.** (a) Upon the occurrence of any Event of Default, upon written notice to Mortgagor, Mortgagee may pursue such other remedies as Mortgagee may have under the Loan Documents or under applicable law. It is understood and agreed that all of Mortgagee's rights, remedies and recourses, pursuant to this Mortgage as well as any other Loan Documents are cumulative and not mutually exclusive and may be exercised by Mortgagee in such manner and combination as Mortgagee may elect to fullest extent permitted under applicable law.

(b) The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the provisions of applicable law.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Article II, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Any such sale or sales made under or by virtue of this Article II, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Article II (whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

**Section 2.03. Possession of the Mortgaged Property.** (Intentionally omitted).

**Section 2.04. Interest After Default.** (Intentionally omitted)

**Section 2.05. Mortgagor's Actions After Default.** After the occurrence of an Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to obtain judgment for the Indebtedness, or of any other nature in furtherance of the enforcement of the Note or of this Mortgage or any of the other Loan Documents, Mortgagor shall, if required by Mortgagee, consent to the

appointment of a receiver or receivers of the Mortgaged Property and of all the earnings, revenues, rents, issues, profits and income thereof. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of (a) the indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance; and (b) the deficiency in case of a sale and deficiency. Mortgagee's right to the appointment of a receiver under this Section 2.05 is an absolute right and shall not be affected by adequacy of security or solvency of Mortgagor.

Section 2.06. Control by Mortgagee After Default. (Intentionally omitted)

Section 2.07. Assignment of Rents and Leases. (Intentionally omitted)

Section 2.08. Mortgagee's Right of Possession in Case of Default. (Intentionally omitted)

### ARTICLE III MISCELLANEOUS

Section 3.01 No Release. (Intentionally omitted).

Section 3.02 Notices. Any notice, demand, request or other communication desired to be given or required pursuant to the terms hereof or the terms of any of the other Loan Documents (except as expressly provided therein to the contrary) shall be in writing and shall be delivered by personal service or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address as the parties hereto may designate in writing from time to time:

**Lender:**  
**MF-Utah, LLC**  
c/o Ted A. Meyers  
3 N. Second St., Suite 300  
St. Charles, Illinois 60174

**With copy to:**  
Andrew E. Kolb, Esq.  
Vanek, Larson & Kolb, LLC  
200 W. Main Street  
St. Charles, Illinois 60174

**Borrower:**  
**Art and Vada Armbrust Family Properties, LLC**  
c/o Steven M. Armbrust, Manager  
909 Deerpath Court  
Wheaton, Illinois 60187

Vada Armbrust  
Trustee of the Arthur A. Armbrust Trust dated April 20, 2006  
c/o Steven M. Armbrust  
909 Deerpath Court

Wheaton, Illinois 60187

With copy to: Patrick C. Keeley, Esq.  
Piccione, Keeley & Associates, Ltd.  
Suite 122C S. County Farm Road  
Wheaton, Illinois 60187

Any such notice, demand, request or other communication shall be deemed given when personally served or if mailed, on the day deposited in the US Mail addressed to the office of the respective party or of any other officer who shall have been designated by the addressee by such notice in writing to the other party.

Section 3.03. Binding Obligations. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Mortgagor and shall inure to the benefit of Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall mean the Mortgagor named herein, any subsequent owner of the Mortgaged Property, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

Section 3.04. Captions. The captions of the Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 3.05. Further Assurances. Mortgagor shall perform, execute, acknowledge, and deliver, at the sole cost and expense of Mortgagor, all and every such further acts, deeds, conveyances, mortgages, assignments, security agreements, financing statements, continuation statements, estoppel certificates, notices of assignment, transfers and assurances as Mortgagee may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto Mortgagee, the rights now or hereafter intended to be granted to Mortgagee under this for carrying out the intention of facilitating the performance of the terms of this Mortgage.

Section 3.06. Severability. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

Section 3.07. General Conditions. (a) This Mortgage may not be altered, amended, modified or discharged orally, and no agreement shall be effective to modify or discharge any of the terms or provisions of this Mortgage in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

(b) No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee in exercising any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Acceptance of any payment after the occurrence of an Event of Default shall not be deemed to waive or cure such Event of Default; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. No acceptance of any payment of any one or more delinquent installments which does not include interest at the



penalty or Default Rate from the date of delinquency, together with any required late charges, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any. Nothing in this Mortgage or in the Note or in any of the other Loan Documents shall affect the obligation of Mortgagor to pay the Indebtedness in the manner and at the time and place therein respectively expressed.

(c) No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals or any other charges affecting the Mortgaged Property shall not constitute a waiver of Mortgagor's default in making such payments and shall not obligate Mortgagee to make any further payments.

(d) Mortgagee shall have the right to appear in and defend any action or proceeding, in the name and on behalf of Mortgagor, which may adversely affect the Mortgaged Property or this Mortgage as determined by Mortgagee in its sole discretion. Mortgagee shall also have the right to institute any action or proceeding which should be brought to protect its interest in the Mortgaged Property or its rights hereunder as determined by Mortgagee in its sole discretion. All costs and expenses incurred by Mortgagee in connection with such actions or proceedings, including, without limitation, attorneys' fees and costs, shall be paid by Mortgagor on demand.

(d) In the event of the enactment after the date of this Mortgage of any law of any governmental authority having jurisdiction, deducting from the value of land for the purpose of taxation, any lien or encumbrance thereon or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor or changing in any way the laws of the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property for federal, state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage or the indebtedness secured hereby, Mortgagor shall promptly pay to Mortgagee, on demand, all taxes, costs and charges for which Mortgagee is or may be liable as a result thereof, provided said payment shall not be prohibited by law or render the Note usurious.

(e) The information set forth on the cover hereof and/or added by schedules, addenda or exhibits are hereby incorporated herein.

(f) Mortgagor acknowledges that it has received a true copy of this Mortgage.

(g) For the purposes of this Mortgage, all defined terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular and plural shall be interchangeable and that the masculine, feminine, and neuter shall be interchangeable.

(h) This Mortgage, together with the Note and the other Loan Documents, contains a final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter hereof superseding all prior oral or written understandings.

Section 3.08. Promotional Material. Intentionally omitted.

Section 3.09. Legal Construction. The enforcement of this Mortgage shall be governed, construed and interpreted in accordance with the laws of the State of Utah. Nothing in this Mortgage, the Note or in any other agreement between Mortgagor and Mortgagee shall require Mortgagor to pay, or Mortgagee to accept, interest in an amount which would subject Mortgagee to any penalty under applicable law. If the payment of any interest due hereunder or under the Note or any such other agreement, or a payment which is deemed interest, exceeds the maximum amount payable as interest under the applicable usury laws, then such excess amount shall be

applied to the reduction of the principal amount of the Indebtedness, or if such excess interest exceeds the then unpaid balance of the principal amount of the Indebtedness, the excess shall be applicable to the payment of such other portions of the Indebtedness then outstanding and upon payment in full of the Indebtedness, shall be deemed to be a payment made by mistake and shall be refunded to Mortgagor.

Section 3.10. Credits Waived. Mortgagor will not claim nor demand nor be entitled to any credit or credits against the Indebtedness for so much of the taxes assessed against the Mortgaged Property or any part thereof as is equal to the tax rate applied to the amount due on this Mortgage or any part thereof, and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property or any part thereof by reason of this Mortgage or the Indebtedness.

Section 3.11. No Joint Venture or Partnership. Mortgagor and Mortgagee intend that the relationship created hereunder and under the Note and the other Loan Documents be solely that of mortgagor and mortgagee or borrower and lender, as the case may be. Nothing herein is intended to create, nor shall create nor be deemed to create, a joint venture, partnership or tenancy relationship between Mortgagor and Mortgagee, nor to grant Mortgagee any interest in the Mortgaged Property other than that of mortgagee or lender.

Section 3.12. Failure to Consent. (Intentionally omitted).

Section 3.13. Non-Transfer of Mortgaged Property. Notwithstanding anything herein to the contrary, Mortgagor shall not sell all or any portion of the Mortgaged Property without the express written consent of the Mortgagee, which consent shall be withheld by Mortgagee in the sole and absolute discretion of the Mortgagee for any reason or for no reason.

Section 3.14. Effect of Extensions of Time and Amendments. If the payment of the indebtedness secured by this Mortgage or any part thereof is extended or varied or if any part of the security is released, all persons now or at any time hereafter liable therefor or interested in the Mortgaged Property, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Any person or entity taking a junior mortgage or other lien upon the Mortgaged Property or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage, the Note, the other Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this paragraph contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Mortgaged Property be sold, conveyed, or encumbered.

Section 3.15. Fixtures. (Intentionally omitted)

Section 3.16. Conflict. In the event of any conflict or inconsistency between the provisions of this Mortgage and those of the other Loan Documents or any other agreement relating to the Loan, the terms of the Note shall govern, but if the conflict is between this Mortgage and a Loan Document other than the Note, the terms of this Mortgage shall govern.

**Section 3.17. Maximum Indebtedness.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness due to or incurred by Mortgagee, including, but not limited to, all Protective Advances in connection with the Indebtedness, all in accordance with the Note, the Loan Agreement, any of the other Loan Documents and this Mortgage; provided, however, that in no event shall the total amount of the Indebtedness, including loan proceeds disbursed plus any additional charges, exceed ONE HUNDRED TEN PERCENT (110%) the aggregate face amounts of the Note. All such advances are intended by the parties hereto to be a lien on the premises from the time this Mortgage is recorded, to the extent provided in applicable law.

**Section 3.18. Business Loan.** Mortgagor acknowledges, covenants, represents and warrants that the Loan evidenced by the Note and secured hereby is a business transacted solely for the purpose of carrying on the business of the Mortgagor, including without limitation reimbursement of expenses incurred by the manager and members of the Mortgagor in connection with the Mortgaged Property, and that the Loan is exempt from the provisions of the Federal Truth-In-Lending Act and Regulation Z (or any substitute, amended, or replacement statutes or regulations).

**Section 3.19. Waiver of Right to Trial By Jury.** EACH OF MORTGAGOR HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY.

**Section 3.20. Incorporation of Recitals and Exhibits.** The foregoing Recitals as well as each and every Exhibit attached to this Mortgage instrument form an integral part of this Mortgage and are hereby incorporated into and made a part of this Mortgage by this reference.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage by its duly authorized representative on the date first above written.

**MORTGAGOR:**

Art and Vada Armbrust Family Properties, LLC,  
an Illinois limited liability company

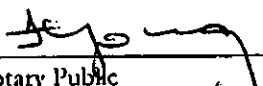
By:   
Steven M. Armbrust, Sole Manager  
a/k/a Steven Armbrust, Sole Manager

Arthur A. Armbrust Trust  
Dated April 20, 2006

By:   
Vada Armbrust, Trustee

STATE OF IL )  
COUNTY OF DuPage ) SS

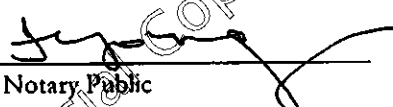
I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that **Steven M. Armbrust**, personally known to me to be the Manager of Art and Vada Armbrust Family Properties, J.L.C, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager, he signed and delivered the said instrument pursuant to authority given by the Members of said Limited Liability Company, as his free and voluntary act, and as the free and voluntary act and deed of said Limited Liability Company, for the uses and purposes therein set forth. **GIVEN** under my hand and official seal this 1<sup>st</sup> day of Sept., 2018.

  
\_\_\_\_\_  
Notary Public



STATE OF IL )  
COUNTY OF DuPage ) SS

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY**, that **Vada Armbrust**, personally known to me to be the Trustee of the Arthur A. Armbrust Trust dated April 20, 2006 and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Manager, he signed and delivered the said instrument pursuant to authority given by the Members of said Limited Liability Company, as his free and voluntary act, and as the free and voluntary act and deed of said Limited Liability Company, for the uses and purposes therein set forth. **GIVEN** under my hand and official seal this 1<sup>st</sup> day of Sept, 2018.

  
\_\_\_\_\_  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION OF REAL ESTATE**

Unofficial Copy

Unofficial Copy

Unofficial Copy

Unofficial Copy

Unofficial Copy

Unofficial Copy

Unofficial Copy

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First American

Exhibit A

ISSUED BY  
First American Title Insurance Company

File No: IR2083-4117323

Issuing Office File Number: IR2083

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

**PARCEL 1:**

BEGINNING AT A POINT SOUTH 89°59'01" WEST 50.00 FEET FROM THE EAST QUARTER CORNER OF SECTION 17, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT IS ON THE WESTERLY RIGHT-OF-WAY (R.O.W.) LINE OF CROSS HOLLOW ROAD; THENCE ALONG SAID R.O.W. LINE NORTH 00°05'17" WEST 21.83 FEET TO THE TRUE POINT OF BEGINNING (T.P.O.B.); THENCE LEAVING SAID R.O.W. LINE, SOUTH 89°54'43" WEST 700.00 FEET; THENCE NORTH 00°05'17" WEST 1851.71 FEET TO A POINT ON THE SOUTHERLY R.O.W. LINE OF 125 SOUTH STREET; THENCE ALONG SAID R.O.W. LINE NORTH 89°50'57" EAST 664.96 FEET TO THE POINT OF CURVATURE (P.C.) OF A CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 55.02 FEET, WITH A 35.00 FOOT RADIUS AND CENTRAL ANGLE OF 90°04'08" TO A POINT ON THE WESTERLY R.O.W. LINE OF CROSS HOLLOW ROAD; THENCE ALONG SAID R.O.W. LINE SOUTH 00°05'17" EAST 1817.44 FEET TO THE POINT OF BEGINNING.

**PARCEL 2:**

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 17, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG THE SOUTHERLY SECTION LINE OF SAID SECTION, NORTH 89°43'14" WEST 1542.23 FEET; THENCE LEAVING SAID SECTION LINE, NORTH 00°16'47" EAST 601.60 FEET; THENCE NORTH 71°03'52" EAST 413.73 FEET; THENCE NORTH 40°34'55" EAST 608.35 FEET; THENCE NORTH 00°06'13" WEST 1136.35 FEET; THENCE NORTH 89°54'43" EAST 700.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY (R.O.W.) LINE OF CROSS HOLLOW ROAD; THENCE ALONG SAID R.O.W. LINE SOUTH 00°06'13" EAST 1654.72 FEET TO THE POINT OF CURVATURE (P.C.) OF A CURVE TO THE LEFT; THENCE CONTINUING ALONG SAID R.O.W. LINE AND ALSO ALONG THE ARC OF SAID CURVE 275.69 FEET, WITH A 750.00 FOOT RADIUS AND CENTRAL ANGLE OF 21°02'22" TO A POINT ON THE EASTERLY LINE OF SAID SECTION 17; THENCE SOUTH 00°06'13" EAST 418.69 FEET; TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THAT PORTION CONVEYED TO CEDAR CITY CORPORATION AS DISCLOSED BY WARRANTY DEED RECORDED DECEMBER 22, 1999 AS ENTRY NO. 416593 IN BOOK 701 AT PAGE 858 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 0°05'54" WEST, 461.00 FEET ALONG THE SECTION LINE AND SOUTH 89°54'06" WEST, 350.00 FEET FROM THE SOUTHEAST CORNER OF SECTION 17, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE 89°54'06" WEST, 733.45 FEET; THENCE NORTH 24°09'54" EAST, 825.34 FEET; THENCE NORTH 89°54'06" EAST, 394.29 FEET; THENCE SOUTH 0°05'54" EAST 752.43 FEET TO THE POINT OF BEGINNING.

**PARCEL 3:**

BEGINNING AT A POINT WHICH IS SOUTH 89°43'08" EAST 249.96 FEET FROM THE SOUTHWEST CORNER OF SECTION 17, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°34'10" WEST 641.38 FEET; THENCE NORTH 89°13'23" WEST 200.00 FEET; THENCE NORTH 00°24'10" WEST 1148.10 FEET; THENCE SOUTH

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68°02'44" W 53.86 FEET TO THE WESTERLY SECTION LINE OF SAID SECTION; THENCE ALONG SAID SECTION LINE TO THE WEST QUARTER CORNER NORTH 00°34'29" WEST 909.39 FEET; THENCE LEAVING SAID SECTION LINE SOUTH 89°53'06" EAST 46.78 FEET; THENCE NORTH 00°17'05" EAST 131.90 FEET; THENCE NORTH 43°20'15" EAST 666.000 FEET; THENCE NORTH 46°47'20" W 201.00 FT; THENCE NORTH 42°43'50" EAST 306.80 FEET; THENCE SOUTH 36°28'32" EAST 1218.19 FEET; THENCE SOUTH 89°59'01" EAST 1011.74 FEET; THENCE SOUTH 00°00'00" EAST 2690.59 FEET TO A POINT ON THE SOUTHERLY SECTION LINE OF SAID SECTION; THENCE ALONG SAID SECTION LINE NORTH 89°43'08" WEST 2025.30 FEET TO THE POINT OF BEGINNING.

PARCEL 4:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 17, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG THE SOUTHERLY SECTION LINE OF SAID SECTION 17, NORTH 89°43'08" WEST 352.95 FEET; THENCE LEAVING SAID SOUTHERLY SECTION LINE, NORTH 00°00'01" WEST 2690.60 FEET TO A POINT ON THE EAST-WEST QUARTER SECTION LINE OF SAID SECTION 17; THENCE ALONG SAID QUARTER SECTION LINE SOUTH 89°59'01" EAST 329.16 FEET TO THE CENTER QUARTER CORNER OF SECTION 17; THENCE CONTINUING ALONG SAID QUARTER SECTION LINE, SOUTH 89°59'01" EAST 1897.19 FEET; THENCE LEAVING SAID QUARTER SECTION LINE, SOUTH 00°06'13" EAST 1499.09 FEET; THENCE SOUTH 40°34'55" WEST 608.35 FEET; THENCE SOUTH 71°03'52" WEST 413.73 FEET; THENCE SOUTH 00°16'47" WEST 601.60 FEET TO A POINT ON THE SOUTHERLY SECTION LINE OF SAID SECTION 17; THENCE ALONG THE SOUTHERLY SECTION LINE OF SAID SECTION, NORTH 89°43'14" WEST 1086.09 FEET TO THE POINT OF BEGINNING.

PARCEL 4A:

A RIGHT-OF-WAY EASEMENT APPURTENANT TO PARCEL 4 AS DISCLOSED BY QUIT CLAIM DEED RECORDED MAY 21, 2014 AS ENTRY NO. 657017 IN BOOK 1290 AT PAGE 388 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS SOUTH 89°59'01" WEST 50.00 FEET ALONG THE CENTER QUARTER SECTION LINE AND SOUTH 00°06'13" EAST 361.43 FEET ALONG THE WESTERLY RIGHT-OF-WAY LINE OF CROSS HOLLOW ROAD, FROM THE EAST QUARTER CORNER OF SECTION 17, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°54'43" WEST 700.00 FEET.

PARCEL 5:

BEGINNING AT THE CENTER QUARTER CORNER OF SECTION 17, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG THE NORTH-SOUTH QUARTER SECTION LINE OF SAID SECTION 17, NORTH 00°30'23" WEST 1348.39 FEET TO THE CENTER CORNER OF SAID SECTION 17; THENCE ALONG THE NORTHERLY LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, NORTH 89°59'57" EAST 664.26 FEET; THENCE LEAVING SAID NORTHERLY LINE, NORTH 00°23'59" WEST 1349.36 FEET TO A POINT ON THE NORTHERLY SECTION LINE OF SAID SECTION 17; THENCE ALONG SAID NORTHERLY SECTION LINE, NORTH 89°50'57" EAST 810.16 FEET TO THE NORTHWEST CORNER OF THE CEDAR CITY CORPORATION ARENA PARCEL; THENCE ALONG THE WESTERLY BOUNDARY LINE OF SAID ARENA PARCEL, SOUTH 00°05'17" EAST 830.00 FEET TO THE SOUTHWEST CORNER OF THE 125 SOUTH STREET RIGHT-OF-WAY (R.O.W.) LINE; THENCE ALONG THE SOUTHERLY R.O.W. LINE OF SAID 125 SOUTH STREET, NORTH 89°50'57" EAST 440.00 FEET; THENCE LEAVING SAID R.O.W. LINE, SOUTH 00°05'17" EAST 1872.26 FEET TO A POINT ON THE EAST-WEST QUARTER SECTION LINE OF SAID SECTION 17; THENCE ALONG SAID QUARTER SECTION LINE, NORTH 89°59'01" WEST 1897.19 FEET TO THE POINT OF BEGINNING.

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