

**RECORDATION REQUESTED BY:**

Anastasi Jellum  
14985 60th Street North  
Stillwater, MN 55082  
Attn: John C. Bealka

**WHEN RECORDED MAIL TO:**

First Bank Financial Centre  
P.O. Box 1004  
155 W. Wisconsin Avenue  
Oconomowoc, Wisconsin 53066  
Attn: Joseph A. Clapper

APN: 10-028-0077

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**DEED OF TRUST WITH ASSIGNMENT OF RENTS  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY FROM TIME TO TIME ACCORDING TO CHANGES IN THE PRIME RATE ANNOUNCED BY BENEFICIARY OR ACCORDING TO CHANGES PUBLISHED BY THE WALL STREET JOURNAL, IN ACCORDANCE WITH THE LOAN AGREEMENT BETWEEN TRUSTOR AND BENEFICIARY.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

FIRST AMERICAN TITLE  
# 899498.TM

**THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Deed of Trust"), made this 14<sup>th</sup> day of February, 2019, between **KIM'S INC.**, a Utah corporation ("Trustor"), whose address is 315 West 3300 South, Salt Lake City, Utah 84115; **FIRST BANK FINANCIAL CENTRE**, a Wisconsin banking corporation, whose address is P.O. Box 1004, 155 W. Wisconsin Avenue, Oconomowoc, Wisconsin 53066 ("Beneficiary"); and **FIRST AMERICAN TITLE INSURANCE COMPANY**, whose address is 833 Michigan St., Suite 550, Milwaukee, WI 53202 ("Trustee").

**W I T N E S S E T H:**

The Trustor **CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE**, for the benefit and security of Beneficiary, the following described property, situated in Davis County, State of Utah:

See attached Exhibit "A," which is incorporated herein by this reference.

Together with all right, title and interest of Trustor in and to the land lying in the streets and roads in front of and adjoining said property.

Together with all awards heretofore and hereafter made to the Trustor for taking by eminent domain the whole or any part of said property or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the Trustee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the amounts owed to Beneficiary, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said Trustor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning said awards to the Trustee, free, clear and discharged of any encumbrances of any kind or nature whatsoever.

**AND ALSO**, all the estate and interest, homestead or other claim, as well in law as in equity, which said Trustor now has or may hereafter acquire in and to said property, together with all Water Rights (as defined below) together with all easements, hereditaments and appurtenances thereof, including all fixtures and articles of personal property now or at any time hereafter attached to or used in any way in connection with the use, operation and occupation of the above-described real estate (the "Fixtures") and any and all buildings and improvements now or hereafter erected thereon ("Improvements"). Such fixtures, including but without being limited to, all screens, awnings, storm windows and doors, window shades, inlaid floor coverings, shrubbery, trees, plants, boilers, tanks, furnaces, radiators, and all heating, lighting, plumbing, gas, electric, ventilating, refrigerating, air-conditioning and incinerating fixtures and equipment of whatsoever kind and nature, except household furniture not specifically enumerated herein, are hereby declared and shall be deemed to be fixtures as between the parties hereto, their heirs, legatees, devisees, executors, administrators, successors and assigns, and all persons claiming by, through or under them; and also all rents, issues and profits, and all leases and documents evidencing same and any and all deposits held as security under said leases, subject however to the right, power and authority hereafter given to and conferred upon said Beneficiary to collect and apply such rents, issues and profits. All of the foregoing is referred to collectively herein as "the Property."

**FOR THE PURPOSE OF SECURING:** (1) Payment of that certain continuing guaranty (the "Guaranty"), of even date hereof, whereby Trustor has guaranteed the obligations of 654 EAST LLC, a Utah limited liability company, and KIMS NEW STAR, LLC, a Utah limited liability company (individually and collectively, "Borrower") under that certain advancing promissory note dated of even date herewith, in the principal sum of SIX MILLION FOUR HUNDRED TWENTY THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$6,423,500.00), which note is payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, together with any extensions and/or renewals or modifications thereof (the "Note"), (2) All other obligations of Borrower or Trustor to Beneficiary hereinafter existing under the Guaranty, this Deed of Trust, UCC Financing Statements, together with any other documents required by Beneficiary referred to collectively herein as the "Loan

Documents"; (3) The payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided; (4) Any extensions or renewals of all such indebtedness described in paragraphs (1) through (4) above; and (5) Any additional loans hereafter made by the then holder of the Guaranty secured hereby to the owner of the real estate described herein.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

1. **MAINTENANCE.** To keep the Property in good condition and repair; not to remove, demolish or structurally alter any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon.

2. **INSURANCE.** To at all times provide, maintain and keep in force the following policies of insurance and will affirmatively provide such evidence as Beneficiary requires that all required insurance is in effect and of the timely payment of premiums thereon:

(a) Insurance against loss or damage to any Improvements on the Property by fire (with so-called extended coverage, vandalism and malicious mischief coverage), in an amount not less than the original amount of the Note. The policies of insurance carried in accordance with this subparagraph shall contain the "Replacement Cost Endorsement."

(b) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air-conditioning and elevator equipment and escalator equipment, provided the Improvements contain equipment of such nature.

(c) Insurance against loss or damage to the personal property by fire and other risks covered by insurance of the type now known as fire (with so-called extended coverage, vandalism and malicious mischief coverage).

(d) Business interruption or loss of rental income insurance in an amount equal to at least twelve (12) months aggregate gross scheduled rent.

(e) Comprehensive public liability insurance, and such other insurance, and in such amounts, as may from time to time be required by Beneficiary against the same or other similar risks so long as Beneficiary is acquiring such insurance for properties similarly situated, including flood insurance if applicable, by federal flood map designation.

(f) All policies of insurance required by the terms of this Deed of Trust shall name Beneficiary as an additional insured and shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer

waiving all rights of set-off, counterclaim or deductions against Trustor. All amounts recoverable under any policy are hereby assigned to Beneficiary and, in the event of a loss, Trustor will give immediate notice by mail to Beneficiary, and Beneficiary may make proof of loss if not made promptly by the Trustor, each insurance company concerned is hereby authorized and directed to make payment for such loss to Beneficiary and Trustor jointly, and the amount collected may, at the sole option of Beneficiary, be used subject to Section 13 below, in any one or more of the following ways: (1) applied upon the indebtedness secured hereby, whether or not such indebtedness is then due and payable, (2) used to fulfill any of the covenants contained herein as Beneficiary may reasonably determine as set forth in Section 13, (3) used to replace or restore the Improvements or personal property to the condition satisfactory to Beneficiary, or (4) released to Trustor. Trustor may not settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance without the consent of Beneficiary, excepting claim(s) not exceeding \$10,000.00 per occurrence, the proceeds of which are used by Trustor to restore/replace the property involved in the claim(s).

(g) All policies of insurance shall be issued by companies and in amounts in each company satisfactory to Beneficiary, which shall be at least companies having an A M Best's rating of "A" and a financial category rating of VIII or better as shall have been approved by Beneficiary in writing. In the event such insurance is issued by a Lloyd's of London affiliate, a guaranty bond in Beneficiary's favor must also be provided. All policies of insurance shall have attached thereto standard mortgagee's and lender's loss payable endorsements for the benefit of Beneficiary in form satisfactory to Beneficiary. Trustor shall furnish Beneficiary with an original policy of all policies of required insurance. If Beneficiary consents to Trustor providing any of the required insurance through blanket policies carried by Trustor and covering more than one location, then Trustor shall furnish Beneficiary with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days prior written notice to Beneficiary. In the event Trustor fails to provide, maintain, keep in, force or deliver and furnish to Beneficiary the policies of insurance required by this Section, Beneficiary may procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor the amount of all such premiums together with interest therein at the applicable rate in effect under the terms of the Note shall be secured by this Deed of Trust. Trustor further agrees, upon Beneficiary's request, to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statement or other documents, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Paragraph 2 or paragraph 4(d), Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Paragraph 2 or paragraph 4(d). Beneficiary may commingle said reserve with its own funds and Trustor shall be entitled to no interest thereon.

(h) That after the happening of any material casualty to the Property or any part thereof, Trustor shall give prompt written notice thereof to Beneficiary.

3. **INDEMNIFICATION; OFFSET.**



(a) If Beneficiary is made a party defendant to any litigation concerning this Deed of Trust or the Property or any part thereof or interest therein, or the occupancy thereof by Trustor, or if Beneficiary elects voluntarily to intervene or appear in any such or similar proceeding then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of said litigation, except for liability arising from the negligence or intentional misconduct of Beneficiary, including reasonable attorneys' fees and expenses incurred by Beneficiary in any such litigation, whether or not any such litigation is prosecuted to judgment. If Beneficiary reasonably commences an action against Trustor to enforce any of the terms hereof or because of the breach by Trustor to enforce any of the terms hereof or because of the breach by Trustor of any of the terms hereof, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect its rights hereunder and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's property or the property of others under Trustor's control from any cause to the extent such loss or damage is insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor hereunder shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein), by reason of: (1) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (2) any restriction or prevention of or interference with any use of the Property or any part thereof; (3) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (4) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver or Beneficiary, or by any court, in any such proceeding; (5) any claim which Trustor has or might have against Beneficiary; (6) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (7) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have had notice of or knowledge of any of the foregoing.

4. **TAXES AND IMPOSITIONS.**

(a) Trustor agrees to pay, at least 10 days prior to delinquency and provide satisfactory evidence of payment to Beneficiary, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other government charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if,

by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (1) a tax or assessment on the Property in lieu of or in addition to the Impositions payable by Trustor pursuant to subparagraph (a) hereof, or (2) a license fee, tax or assessment upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be include within the term "Impositions" as defined in subparagraph (a) hereof, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Beneficiary, all obligations secured hereby together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary.

(c) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition, any assessment, mechanic's lien or materialmen's lien at the time and in the manner provided in this Paragraph 4, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition any assessment, mechanic's lien or materialmen's lien, and unless, at Beneficiary's sole option, (1) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (2) Trustor shall furnish a good and sufficient bond or surety as reasonably requested by and satisfactory to Beneficiary; or (3) Trustor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(d) Upon the request of Beneficiary, in furtherance of the foregoing and anything to the contrary herein notwithstanding, Trustor shall pay to Beneficiary, on the day monthly installments of principal and interest are payable under the Guaranty, until the Guaranty is paid in full, an amount equal to one-twelfth of the annual Imposition reasonably estimated by Beneficiary to pay the installment of taxes next due on the Property and also an amount equal to one-twelfth of the annual insurance premiums, as well as all city taxes, if any, and all special assessments. Trustor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements or other documents, and providing Trustor has deposited sufficient funds with Beneficiary pursuant to this Paragraph 4, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Paragraph 4. Beneficiary may impound or reserve for future payment of Impositions and insurance premium such portion of such payments as are sufficient to fully pay impositions and insurance premiums, applying the balance on the principal of or interest on the obligations secured hereby. Should Trustor fail to deposit with Beneficiary (exclusive of that portion of said payments which has been applied by Beneficiary on the principal of or interest on the indebtedness secured by the Loan Documents) sums sufficient to fully pay such Impositions and/or insurance premium at least thirty (30)

days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary as herein elsewhere provided, or at the option of Beneficiary the latter may, without making any advance whatever, apply any sums held by it upon any obligation of the Trustor secured hereby. Should any default occur or exist on the part of the Trustor in the payment or performance of any of Trustor's and/or any guarantor's obligations under the terms of the Loan Documents, Beneficiary may, at any time at Beneficiary's option, apply any sums or amounts in its hands received pursuant to any of the Loan Documents, or as rents or income of the Property or otherwise, upon any indebtedness or obligation of the Trustor secured hereby in such manner and order as Beneficiary may elect. The receipt, use or application of any such sums paid by Trustor to Beneficiary hereunder shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust or any of the rights or powers of Beneficiary or Trustee under the terms of the Loan Document or any of the obligations of Trustor and/or any guarantor under the Loan Documents. Beneficiary may commingle said reserve with its own funds, and Trustor shall be entitled to no interest thereon.

(e) Trustor covenants and agrees not to suffer, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Property as a single lien.

5. **UTILITIES.** To pay when due all utility charges which are incurred by Trustor for the benefit of the Property or which may become a charge or lien against the Property for gas, electricity, water or sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon (subject to Trustor's contest rights in 4(c) hereof).

6. **EVIDENCE OF TITLE.** To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstract of title or policies of title insurance and any extensions or renewals thereof or supplements thereto. Notwithstanding the foregoing, Trustor's obligations shall be deemed initially satisfied by Trustor's delivery at the time of recordation of this Deed of Trust, of a Lender's policy of title insurance acceptable to Beneficiary. Subsequently, Beneficiary may reasonably require additional evidence of title as the result of subsequent acts of Trustor or subsequent events which affect the property.

7. **DEFENSE OF TITLE.** To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

8. **RIGHT TO CURE.** Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and upon five (5) days notice to Trustor except in emergency circumstances when no notice will be required and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes, commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior hereto; and in

exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

9. **REIMBURSEMENT WITH INTEREST.** To pay immediately and without demand all sums reasonably expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the applicable rate in effect under the Note at the time of the expenditure until paid, and the repayment thereof shall be secured hereby.

10. **LATE CHARGE.** To pay Beneficiary a "late charge" of five cents (\$.05) for each One Dollar (\$1.00) of each payment due hereunder or due pursuant to the Note of even date hereof (other than the payment of the loan in full on the maturity date) which is not either received by Beneficiary or Beneficiary's agent on or before the tenth (10th) day after any such payment is due or when received by Beneficiary such payment is evidenced by a postmark indicating the payment was mailed before said tenth (10th) day. This payment shall be made to cover the extra expense involved in handling delinquent payments.

11. **WATER RIGHTS.**

(a) Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Davis, 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 subject to this Deed of Trust.

(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 Beneficiary 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 Beneficiary 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.

(f) As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Deed of Trust, means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Property, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other

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

12. **MECHANIC'S LIENS; STATE CONSTRUCTION REGISTRY.**

(a) Trustor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.

(b) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Ann. with regard to filings and notices. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with Utah Code Ann. § 38-1a-201. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor.

(c) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

(d) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code Ann. § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

(e) If required by Beneficiary, Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Utah Code Ann. § 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Property secured hereby, the address of the Property, and the county in which the Property is located.



(f) Trustor shall cause, as a condition precedent to the closing of the Loan, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing second priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.

(g) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than those permitted by Beneficiary in writing), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Ann. § 38-1a-804 and otherwise complies with the requirements of Utah Code Ann. § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Ann. § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(h) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Land from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account of Trustor and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Ann. § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

**IT IS MUTUALLY AGREED THAT:**

13. **CASUALTY OR CONDEMNATION LOSS.** Should the Property or any substantial part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage but any such compromise or settlement shall require the consent of Trustor which should not be unreasonably withheld. Subject to Section 2(e) above, all such compensation, awards, damages, rights or action and proceeds, including the proceeds of any policies of fire and other insurance affecting said Property, are hereby assigned to Beneficiary, who may, after deducting therefrom



all of its expenses, including attorney's fees, apply the same on any indebtedness secured hereby (without payment of any prepayment or yield maintenance premium), and any excess shall be paid to Trustor. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee reasonably may require. Notwithstanding the foregoing to the contrary, insurance proceeds available as the result of casualty shall be used for reconstruction provided:

- (a) such destruction occurs at least 1 year prior to the maturity of the Note, and
- (b) the amount of the insurance proceeds in question does not exceed 75% of the remaining balance of the Note, and
- (c) the Trustor provides a certificate (with appropriate backup by an acceptable contractor) that such repair and restoration can be completed within one year, and
- (d) the Note is not in default and has not had a history of previous defaults, delinquencies or other loan servicing problems, and
- (e) the destruction does not (significantly) impair the Property's income-producing potential.

If insurance proceeds are released for repair and restoration, Trustor shall provide Beneficiary a construction contract for such work, setting forth the cost thereof. Upon receipt of architect's progress certificates, insurance proceeds shall be disbursed on a monthly basis with Beneficiary always retaining sufficient funds to complete the repair and restoration.

Likewise, notwithstanding the foregoing, in case of a partial condemnation, awards or judgments from such condemnation will be made available for repair and restoration of the property provided:

- (a) such condemnation occurs at least 1 year prior to the maturity of the Note, and
- (b) the amount of the condemnation proceeds in question does not exceed 75% of the remaining balance of the Note, and
- (c) Trustor provides a certificate (with appropriate backup by an acceptable contractor) that such repair and restoration can be completed within 1 year, and
- (d) the Note is not in default and has not had a history of previous defaults, delinquencies or other loan servicing problems, and
- (e) the condemnation does not reduce the appraised value of the restored property to less than 133% of the remaining principal balance of the Note, and
- (f) the condemnation does not (significantly) impair the Property's income-producing potential.

If condemnation proceeds are released for repair and restoration, Trustor shall provide Beneficiary a construction contract for such work, setting forth the cost thereof. Upon architect's progress certificates, condemnation proceeds shall be disbursed on a monthly basis with Beneficiary always retaining sufficient funds to complete the repair and restoration.

14. **ACTS OF TRUSTEE.** At any time and from time to time upon written request of Beneficiary, payment of Trustee's fees and presentation of this Deed of Trust and the Guaranty for endorsement (in case of full reconveyance, for cancellation and retention) without affecting the liability of any person for the payment of the indebtedness secured hereby, and without releasing the interest of any party joining in this Deed of Trust, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; and/or (d) reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof.

15. **ASSIGNMENT OF RENTS.** As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the Property affected by this Deed of Trust and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable but not more than one month in advance. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the Property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liabilities under, nor a subordination of the lien or charge on this Deed of Trust to any such tenancy, lease or option. This Section 15 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Section 15 and the provisions of the Utah Act, the provisions of the Utah Act shall control and Beneficiary shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

16. **COLLECTION OF RENTS, ETC. ON DEFAULT.** Upon any default by Trustor hereunder, Beneficiary at any time without notice either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

17. **NON-WAIVER.** The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Furthermore, the failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

18. **TIME OF ESSENCE.** Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums

secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee the note and all documents evidencing expenditures secured hereby.

19. **SURRENDER OF POSSESSION.** Trustor agrees to surrender possession of the Property to the purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

20. **ACCELERATION.** Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust as a mortgagee in accordance with Lender's right under Utah Annotated Code § 57-1-23, or other applicable law, and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorneys fee in such amount as shall be fixed by the court.

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

22. **HEIRS, SUCCESSORS, ETC., DEFINITIONS.** This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Guaranty secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

23. **ACCEPTANCE OF TRUST.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

24. **GOVERNING LAW.** This Deed of Trust shall be construed according to the laws of the state of Utah.

Notwithstanding the foregoing, the Note secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Trustor or any

guarantor of Trustor's obligations under the Loan Documents may claim or assert against SBA any local or state law to deny any obligation of Trustor or any guarantor of Trustor's obligations under the Loan Documents, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

25. **REQUEST FOR NOTICE OF DEFAULT.** The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

26. **SECURITY AGREEMENT.**

(a) **Creation of Security Interest.** Trustor hereby grants to Beneficiary a security interest in the Fixtures, Improvements, and other personal property owned by Trustor, both tangible and intangible, and located on or at the Property, including, without limitation, replacements, substitutions, after-acquired property and any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Trustor contained in any of the Loan Documents, and together with any other fixtures of any type or nature that secures obligations of the Trustor arising under the Loan Documents.

(b) **Warranties, Representations and Covenants of Trustor.** With respect to such fixtures owned or to be owned by Trustor and other personal property, the Trustor hereby warrants, represents and covenants as follows:

(i) Trustor is, and as to portions of the fixtures to be acquired after the date hereof will be, the sole owner of the fixtures and other personal property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever, other than that certain Deed of Trust dated May 4, 2017, by and between Trustor and First Utah Bank, as beneficiary, to secure an original indebtedness of \$1,900,000.00, recorded on May 4, 2017, as Entry No. 3018227 in Book 6758 at Page 1040 of the Official Records (the "First Priority Deed of Trust"). Trustor will notify Beneficiary of, and will defend the fixtures and other personal property against, all claims and demands of all persons at any time claiming the same or any interest therein. Notwithstanding, Trustor shall be entitled to grant purchase money security interests for after-acquired fixtures and other personal property but only to the extent of the amounts actually paid for such fixtures and other personal property.

(ii) Except in the ordinary course of business, Trustor will not lease, sell, convey or in any manner transfer the fixtures and other personal property without the prior written consent of Beneficiary.

(iii) The fixtures and other personal property are not used or bought for personal, family, or household purposes.

(iv) The fixtures and other personal property will be kept on or at the Property, and Trustor will not remove the fixtures and other personal property from the Property without the prior written consent of Beneficiary, except such portions or items of fixtures and other personal property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor.

(v) Trustor maintains a place of business in the State of Utah and Trustor will immediately notify Beneficiary in writing of any change in its place of business as set forth in the beginning of this Deed of Trust.

(vi) At the request of Beneficiary, Trustor will join Beneficiary in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Utah in form satisfactory to Beneficiary, and will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable.

(vii) All covenants and obligations of Trustor contained herein relating to the Property shall be deemed to apply to the fixtures and other personal property whether or not expressly referred to herein.

(viii) This Deed of Trust constitutes a Security Agreement as that term is used in the Uniform Commercial Code of Utah.

(ix) This Deed of Trust also constitutes a financing statement for the purpose of the UCC and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of the county in which the Property is located. Trustor hereby authorizes Beneficiary to file all financing statements (including continuation statements and amendments), evidencing the security interest granted to Beneficiary in the Collateral with all appropriate filing jurisdictions. For such purpose information concerning the debtor and the secured party is set forth below:

Name of Debtor:	KIM'S INC.
Debtor's Mailing Address:	315 West 3300 South, Salt Lake City, Utah 84115
Debtor's Organization Number:	6787750-0142
Address of Property:	316 West 1550 North, Layton, Utah
Name of Secured Party:	First Bank Financial Centre
Address of Secured Party:	940 Bell Avenue PO Box 270220 Hartford, WI 53027

This financing statement covers the Property. Some of the items or types of property comprising the Property are or are to become fixtures on the real property described in this Deed of Trust. Trustor is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

27. **SUBORDINATION AND APPROVAL OF LEASES.** Beneficiary may, at its sole option, require that any and/or all of the leases affecting the Property be made subject and subordinate to the lien of this Deed of Trust and related security instruments. Similarly, Beneficiary may require that any and/or all of the leases affecting the Property be made superior and prior to the lien of the Loan Documents. Trustor covenants that it will fully perform all of its duties as lessor under any lease pertaining to the Property. If Trustor shall default under any such lease beyond all applicable notice or cure periods, it shall also constitute a default under this Deed of Trust.

28. **DUE ON SALE, OTHER LIENS AND OTHER SECURITY INTERESTS.** Trustor covenants and agrees whether voluntarily or by operation of law not to sell, transfer, convey, mortgage, encumber or hypothecate any part of the legal or equitable title or ownership of the Property or any interest therein or grant any option or change the ownership or structure of Trustor in any manner without the prior

written consent of Beneficiary. Should Trustor have knowledge either actual or constructive of any sale, escrow for sale, contract for sale, conveyance, assignment or transfer of all or part of the property, Trustor shall immediately notify Beneficiary. Beneficiary shall, upon Trustor's written request, allow Trustor to transfer the Property for purposes of estate planning and for purposes of reorganization or changing the form in which Trustor conducts business without charging an assumption fee provided Trustor and all guarantors shall remain fully obligated to Beneficiary, in accordance with the terms of the Loan Documents and that Trustor shall in such case be required to pay Beneficiary's reasonable expenses, including attorney fees, in reviewing and granting such approval as well as all other reasonable expenses such as a date down of Beneficiary's title insurance policy. In addition to the foregoing at Trustor's request, upon Beneficiary's prior written approval with not less than sixty (60) days prior written notice, Trustee shall have a one time right to transfer the Property, providing: (i) Beneficiary shall be provide all information Beneficiary as to, but not limited to, terms of sale, financial and experience information, including credit reports on proposed third party transferee and Beneficiary determines the operating experience, financial and creditworthiness of the proposed third-party transferee are acceptable to Beneficiary at Beneficiary's sole option; (ii) the proposed third-party transferee assumes all obligation to Beneficiary with Trustor and all Guarantors remaining fully obligated to Beneficiary; (iii) all Guarantors confirm their continuing guaranty; and (iv) future management of the Property shall be satisfactory to Beneficiary; (v) no further encumbrance is made to the Property and the Property shall remain without other encumbrances, except Beneficiary's lien; and (vi) payment of all costs and attorney fees of Beneficiary and the payment of an assumption fee equal to one and a half percent (1.5%) of the outstanding Guaranty amount to be paid at the time Beneficiary's approval is requested (in the event approval is denied the sum, less Beneficiary's out of pocket expenses will be returned), Beneficiary may, on a one time basis, approve a transfer to a third party transferee. Regardless of whether such transfer is with one of the Trustors or otherwise, Beneficiary shall also have the right to require amendments to the Guaranty and other Loan Documents at the time of such request using (which shall not include amendments to the economic terms of the documents), the considerations used by Beneficiary in initially making this loan. Any violation of this provision shall be deemed a default hereunder and shall entitle Beneficiary to accelerate the loan. In the event of any such sale or transfer of all or any part of the Property, the purchaser or transferee shall be deemed to have assumed or agreed to pay the indebtedness owing the Beneficiary hereunder, whether or not an instrument evidencing such sale or transfer expressly so provides, and the Beneficiary may deal with such new owner or owners with reference to the debt secured hereby in the same manner as if the new purchaser or transferee were the Trustor; provided, however, that no such dealings shall in any way discharge the Trustor's liability hereunder or upon the indebtedness hereby secured, unless Beneficiary expressly releases Trustor in writing as the release of Trustor shall be at the sole option of Beneficiary and Beneficiary's approval of a third-party transferee shall in nowise be considered an implied release of Trustor. Notwithstanding the foregoing to the contrary ownership interest in Trustor may be transferred, but only upon (i) Beneficiary's prior written approval and upon obtaining a date-down endorsement to Beneficiary's title policy, (ii) payment of Beneficiary's reasonable underwriting fees and attorney's fees and any other reasonable cost or expense associated with such reasonable transfer as follows: (a) up to 49% of the interests of Trustor and (b) transfers of ownership interests for estate planning purposes or upon the death or incapacity of any member of Trustor so long as the day to day operations of the property are run by a manager acceptable to Lender.

Trustor agrees that upon any default by Trustor under this Deed of Trust and following the acceleration of maturity as herein provided, a tender of payment in the amount necessary to satisfy the entire indebtedness secured hereby, made at any time prior to such sale shall constitute an evasion of the payment terms hereunder, shall be deemed to be a voluntary prepayment and such payment, to the extent permitted by law, will therefore include the premium required under the prepayment privilege, if any, contained in the Guaranty secured hereby, or if at that time there be no such prepayment privilege, then



such payment, to the extent permitted by law, will include a premium for such prepayment as provided in the Guaranty. Trustor hereby covenants that no lien of any mechanics or materialmen has attached, or may validly attach, to the Property or any part thereof; that Trustor will pay all sums which if not paid may result in the acquisition or creation of a lien prior to or of equal priority with or junior to the lien of this Deed of Trust (subject to contest rights), or which may result in conferring upon a tenant of any part of the Property a right to recover such sums as prepaid rent or as a credit or offset against any future rental obligation; that Trustor will not use the Property for any purpose which violates any federal or state law, governmental regulation or local ordinance; and, that Trustor will not grant any other lien or security interest on any part of the Property or personal property without full disclosure to and prior written consent by Beneficiary which consent may be withheld in Beneficiary's sole discretion. Trustor will require Trustor's tenant to operate the Property at all times for business purposes acceptable to Beneficiary in its sole discretion and Trustor shall not acquire any equipment essential to the operation of the property or fixtures covered by this Deed of Trust subject to any security interest or other charge or lien having priority over the lien or security interest granted under this Deed of Trust other than the First Priority Deed of Trust.

29. **EVENTS OF DEFAULT.** Any of the following shall constitute a "default" hereunder:

(a) The failure to pay in full, when due, any payment required hereunder or under the Guaranty or any other agreement securing the Note within ten (10) days after the due date thereof or expiration of any grace period specified in the Guaranty.

(b) The filing of any petition or the commencement of any case or proceeding by Trustor or any endorser or guarantor of the Guaranty under any provision or chapter of the Federal Bankruptcy Act, the Federal Bankruptcy Code, or any other federal or state law relating to insolvency, bankruptcy, or reorganization; or an adjudication that Trustor or any such guarantor or endorser is insolvent or bankrupt; or the entry of an order for relief under the Federal Bankruptcy Code with respect to Trustor or any such guarantor or endorser.

(c) The filing of any such petition or the commencement of any such case or proceeding against Trustor or against any endorser or guarantor, unless such petition and the case or proceeding initiated thereby are dismissed within forty-five (45) days from the date of such filing; the filing of an answer by Trustor or such endorser or guarantor admitting the allegations of any such petition; or the appointment of or the taking of possession by a custodian, trustee or receiver for all or any assets of Trustor or any such endorser or guarantor, unless such appointment is vacated or dismissed or such possession is terminated within forty-five (45) days from the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Trustor or any such endorser or guarantor by such custodian, trustee, or receiver, other than in the ordinary course of the business of Trustor or such endorser or guarantor.

(d) The insolvency of Trustor or of any guarantor or endorser of the Guaranty; or the execution by Trustor or any such guarantor or endorser of an assignment for the benefit of creditors; or the convening by Trustor or any such guarantor or endorser of a meeting of its creditors, or any class thereof, for the purposes of effecting a moratorium upon or extension or composition of its debts; or if Trustor or any such guarantor or endorser is generally not paying its debts as they mature.

(e) The admission in writing by Trustor or any endorser or guarantor of the Guaranty that it is unable to pay its debts as they mature or that it is generally not paying its debts as they mature.

(f) The liquidation, termination, or dissolution of any guarantor or endorser of the Guaranty who are corporations, partnerships, or joint ventures under the laws of the state under which such entities are organized resulting in a conclusion by Beneficiary in its reasonable discretion that it is insecure as a result thereof.

(g) The material falsity or material misleading nature of any representation or warranty contained herein or any representation to Beneficiary concerning the financial condition or credit standing of either Trustor or any third party obligated to Beneficiary under any agreement guaranteeing performance of any of the obligations of Trustor referred to herein, or the determination of Beneficiary of a threat to its security by reason of a material adverse change in the financial condition or credit standing of either Trustor or of any such third party.

(h) The failure of Trustor to make any deposit of funds required hereunder within the time period provided herein, or in the absence of such a provision, within fifteen (15) days after written demand therefor from Beneficiary.

(i) The existence of any encroachment which has occurred without the approval of Beneficiary and which is not removed or corrected within thirty (30) days after written notice to Trustor of the existence thereof; or if such encroachment cannot be corrected or removed in such time, such additional time not to exceed a total of ninety (90) days providing Trustor proceeds with all diligence during such time.

(j) The filing of any claim or lien against the Property (except for the First Priority Deed of Trust, and subject to Trustor's contest rights in accordance with the provisions hereof), any improvements thereon or any part thereof, or any interest or right made appurtenant thereto and the continued maintenance of said claim of lien for a period of sixty (60) days without discharge or satisfaction thereof or provision therefor satisfactory to Beneficiary in accordance with the terms hereof, including the posting of a bond or indemnification satisfactory to Beneficiary or the demonstration to Beneficiary's reasonable satisfaction of Trustor's ability to discharge or satisfy said claim or notice.

(k) The obtaining by any person of an order or decree in any court of competent jurisdiction enjoining the construction or development of any improvements, which proceedings are not discontinued and such decree is not vacated within sixty (60) days after the granting thereof.

(l) The demolition, destruction or substantial damage of the Property so that in Beneficiary's reasonable judgment it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable time, providing Trustor shall have sixty (60) days from the date of notice of Beneficiary's determination before such shall be a default.

(m) The failure of the Trustor within thirty (30) days after written notice from Beneficiary or up to ninety (90) days if such requirement cannot reasonably be corrected within such shorter time period and Trustor proceeds with all diligence to fully perform any and all covenants and agreements hereunder or under the Guaranty, or the occurrence of a default hereunder or under the Guaranty or any instrument given to secure or guaranty the Note, or under any other indebtedness in favor of or owned by Beneficiary, irrespective of whether Beneficiary elects pursuant to a provision thereunder to declare the entire unpaid principal sum together with all interest thereon plus any other sums due thereunder immediately due and payable; provided that if a failure to fully perform or an occurrence of a default is specifically covered elsewhere herein, in the Guaranty or in any other instrument or Loan Document, the

provisions of this subparagraph (m) shall not be applicable in such a situation and the requirement of notice and/or period to cure, if any, set forth in such other reference shall control.

(n) The sale, lease (except in the ordinary course of operating the Property), exchange, conveyance, transfer, mortgage, assignment, pledge or encumbrance, either voluntarily or involuntarily, or the agreement to do so, without the prior written consent of the Beneficiary being first obtained, other than easements not adversely affecting the value of the Property and leases to the extent otherwise permitted hereunder, or the levy, attachment or seizure pursuant to court order of the right, title or interest of Trustor or of any successor to Trustor, in and to the Property.

(o) The failure of Trustor to comply with Environmental Requirements as this term is defined in paragraph 33.

(p) An event of default occurs under any of the Loan Documents, including the Guaranty.

30. **REMEDIES UPON DEFAULT.** At any time after a default hereunder and after Beneficiary has given Trustor such notice of default as may be required under the applicable subparagraph of Paragraph 28 above, Beneficiary may (if it has not already done so pursuant hereto or to the Guaranty), at its option, and without further notice or demand, declare all indebtedness secured hereby immediately due and payable, and irrespective of whether Beneficiary exercises such option, and regardless of: (i) Beneficiary's delay in exercising such option; (ii) Beneficiary's failure to exercise such option on the occasion of any prior default or abandonment; or (iii) the adequacy of Beneficiary's security, it may, at its option and in its sole discretion, without any additional notice or demand to or upon Trustor, do one or more of the following:

(a) Beneficiary may in person or by agent or by the appointment of a receiver enter upon, take possession of, manage and operate the Property or any part thereof; make repairs and alterations, and do any acts which Beneficiary deems proper to protect the security hereof or to operate or maintain the Property; and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. Without limiting the generality of the foregoing, Beneficiary may make, modify, enforce, cancel or accept surrender of any lease, remove and evict any lessee, increase or decrease rents under any Lease, appear in and defend any action or proceeding purporting to affect the Property, and perform and discharge each and every obligation, covenant and agreement of Trustor contained in any Lease. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the Property, any of the personal property or fixtures which has been removed therefrom. The entering upon and taking possession of the Property, the collection of any rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default hereunder or invalidate any act done pursuant to any such notice. Beneficiary or Beneficiary's agent shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary. Nothing contained in this paragraph shall require Beneficiary to incur any expense or do any act. If the rents of the Property are not sufficient to meet the costs of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of

Trust. Such amounts, together with interest and attorneys' fees if applicable as provided herein shall be immediately due and payable. Notwithstanding Beneficiary's continuance in possession or receipt and application of rents, issues, or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of a default, including the right to exercise the power of sale. Any of the actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary is so entitled, without regard to the adequacy of any security for the indebtedness hereby secured.

(b) Beneficiary shall, without regard to the adequacy of any security for the indebtedness hereby secured, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect the Property, and operates the same and collect the rents, issues and profits therefrom.

(c) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust or to enforce any of the covenants hereof. Beneficiary shall be entitled to possession of the property during any period of redemption.

(d) Beneficiary may elect to cause the Property to be sold pursuant to the power of sale granted herein in accordance with the laws of the State of Utah:

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

(ii) Beneficiary may cause any such sale or other disposition to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any redemption period required by law) or Beneficiary may delay any such sale or other disposition for such period of time as Beneficiary deems to be in its best interest.

(iii) Should Beneficiary elect to cause any of the Property to be disposed of as personal property as permitted by subparagraph (i) above, it may dispose of any part thereof in any manner now or hereafter permitted by the Utah Uniform Commercial Code or in accordance with any other remedy provided by law. Both Trustor and Beneficiary shall be eligible to Purchase any part or all of the Property at any such disposition. Any such disposition may be either public or private as Beneficiary may so elect, subject to the provisions of the Utah Uniform Commercial Code. Beneficiary shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor it shall constitute reasonable notice to Trustor. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Beneficiary, upon an event of default hereunder, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Ann. § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Ann. § 57-1-30 or other applicable law.

(iv) Should Beneficiary elect to sell any part of the Property which is real property or which Beneficiary has elected to treat as real property, upon such election Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Property at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary, shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-27. If the Property consists of several lots of parcels, Beneficiary may designate the order in which such lots or parcels shall be offered for sale or sold (but subject to Trustor's statutory right under Utah Code Ann. § 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold). Any person, including Trustor, or Beneficiary, but not the Trustee, may purchase at the sale. Upon any sale Trustee shall execute and deliver to the purchaser or purchasers a Trustee's Deed, in accordance with Utah Code Ann. § 57-1-28, but without any covenant or warranty whatsoever, express or implied, whereupon such purchaser or purchasers shall be let into immediate possession.

(v) In the event of a sale or other disposition of any such property, or any part thereof, and the execution of deed or other conveyance, pursuant thereto, the recitals therein of facts, such as a default, the giving of notice of default and notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and any other fact affecting the regularity or validity of such sale or disposition, shall be *prima facie* evidence of the truth of such facts.

(vi) Trustee shall apply the proceeds from the sale of the Property as follows:

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

SECOND: To payment of the obligations secured by the Deed of Trust.

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

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

No remedy herein provided shall be exclusive of any other remedy which now exists or which may hereafter exist by law. Every power or remedy hereby given to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. On any default, Beneficiary may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby, and Beneficiary is hereby authorized and empowered at its option, without any obligation



so to do, and without affecting the obligation hereof, to apply toward the payment of any indebtedness of Trustor to Beneficiary, any and all sums of money of Trustor which Beneficiary may have in its possession or under its control including without limitation, any savings account, deposit, investment certificate, escrow, trust funds or amounts held by Beneficiary. Trustor for itself and all who may claim through or under it hereby waives, to the extent permitted by law, any and all right (a) to have the Property or any portion thereof or any other property securing Trustor's obligations under the reimbursement agreement marshaled upon any foreclosure of the lien thereof or of any other instruments, documents or agreements securing repayment of Trustor's obligations under the Guaranty or otherwise and agrees that any court having jurisdiction to foreclose such lien may order the Property and such other property sold as an entirety; and (b) to direct the order of the sale of the Property or any other property securing Trustor's obligations under the Guaranty or otherwise and agrees that Beneficiary may exhaust the security given for such obligations in any order.

Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Ann. § 57-1-32 that the value of the Property as determined and set forth in an FIRREA appraisal of the Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of Utah Code Ann. § 57-1-32.

31. **PERIODIC FINANCIAL STATEMENTS.** Trustor covenants and agrees to supply the Beneficiary annually, within ninety (90) days after the end of each of its fiscal years and at other reasonable times upon request by Beneficiary, but neither Trustor or Guarantors, if any, shall be required to provide such financial statements more often than each fiscal year except in the event of a default that is not cured within the applicable curative time period: (a) a statement of income and expense with respect to the Property, in form as may be required by Beneficiary; (b) statements of financial condition of Trustor, together with a financial statement of each Guarantor, in form as may be required by Beneficiary; (c) a rent schedule of the Property certified by the Trustor, showing the name of each tenant and space occupied, the rent and additional rent due and payable, the last date to which rent was paid and whether or not such tenant was then in default under the terms of the lease. All such statements shall be in form and substance satisfactory to Beneficiary in its reasonable discretion and Trustor shall furnish to Beneficiary such additional financial statements as Beneficiary may from time to time reasonably require. Such statements will be prepared in accordance with the standards established by the American Institute of Certified Public Accountants. Trustor's failure to supply any such statements or tax returns within ninety (90) days after Beneficiary's written request therefor shall constitute an event of default hereunder.

Beneficiary and its designated agent shall have the right to inspect Trustor's books and records with respect to the Property at all reasonable times upon prior reasonable notice. If the Property shall be operated under a management agreement, such management agreement shall be satisfactory in form and substance to Beneficiary, with a property management company acceptable to Beneficiary. The management agreement shall be assigned to Beneficiary as additional security for the Guaranty. The management contract shall be terminable at Lender's option in the event of a default upon the Guaranty. The management company may be a wholly-owned subsidiary of the Trustor. No charges may be assessed by Beneficiary for reviewing any such agreement.

32. **NO SECONDARY FINANCING.** Trustor covenants that it will not create or permit to be created or filed against the Property any mortgage lien or other lien or liens inferior or superior to the



lien of this Deed of Trust, without prior written consent of Beneficiary, which consent shall be in Beneficiary's sole and absolute discretion (except for the First Priority Deed of Trust, and other than mechanic's liens which Trustor or Guarantor, as applicable is contesting in accordance with Section 4(c) and tax liens which are not then payable).

33. **ENVIRONMENTAL PROVISIONS.**

(a) For the purposes of this Trust Deed and the Loan Documents following terms shall have the following meanings: (1) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is or contains petroleum, gasoline, diesel fuel, or another petroleum hydrocarbon product, (2) the "Environmental Requirements" or Environmental Requirement" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or imposing liability or standards of conduct concerning Hazardous Material or addressing the protection of the environment or human health, and (3) the term "Governmental Authority" shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(b) Trustor hereby represents and warrants to the Beneficiary that except as noted in the environmental report delivered to Beneficiary in connection with the Loan, to the best of Trustor's knowledge: (1) except as may be disclosed in any environmental indemnity agreement, no Hazardous Material in violation of Environmental Requirements is currently located at, on, in, under or about the Property, (2) no releasing, emitting, discharging, leaching, dumping or disposing of Any Hazardous Material from the Property onto any other property or from any other property onto or into the Property occurred or is occurring in violation of any Environmental Requirement, (3) no notice of violation, lien, complaint, suit, order or other notice with respect to the Property is presently outstanding under any Environmental Requirement, and (4) the Property and the operation thereof are in full compliance with all Environmental Requirements.

(c) Trustor shall comply, and shall cause all tenants or other occupants of the Trust property to comply, in all respects with all Environmental Requirements, and will not generate, store, handle, process, dispose of or otherwise use, and will not permit any tenant or other occupant of the Property to generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in on or about the Property in a manner that could lead or potentially lead to the imposition on Trustor, the Beneficiary or the Property of any liability or lien of any nature whatsoever under any Environmental Requirement. Trustor shall notify the Beneficiary promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Property which is required to be reported to a Governmental Authority under any Environmental Requirement, will promptly forward to the Beneficiary copies of any notices received by Trustor relating to alleged violations of any Environmental Requirement and will promptly pay when due any fine or assessment against the Beneficiary, Trustor or the Property relating to any Environmental Requirement. If at any time it is determined that the operation or use of the Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Property which, under any Environmental Requirement, require special

handling in collection, storage, treatment or disposal, or any other form of cleanup or corrective action, Trustor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from the Beneficiary, take, at Trustor's sole cost and expense, such actions as may be necessary to fully comply in all respects with all Environmental Requirements, provided, however, completed within such thirty (30) day period, that if such compliance cannot reasonably be Trustor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all respects and in a timely fashion with all Environmental Requirements.

(d) If, prior to the payment of all amounts due under the Loan having been paid in full, Trustor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action described in clause (c) above, the Beneficiary may, in its sole and absolute discretion, make advances or payments toward the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by the Beneficiary (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from Trustor and shall bear interest at the Default Rate set forth in the Note from the date any such sums are so advanced or paid by the Beneficiary until the date any such sums are repaid by Trustor to the Beneficiary. Trustor will execute and deliver, promptly upon request, such instruments as the Beneficiary may deem useful or necessary to permit the Beneficiary to take any such action, and such additional notes, deeds of trust and mortgages, as the Beneficiary may require to secure all sums so advanced or paid by the Beneficiary. If, prior to payment in full, a lien is filed against the Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of Trustor or for which Trustor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State where the Property is located, then Trustor will, within thirty (30) days from the date that Trustor is first given notice that such lien has been placed against the Property (or within such shorter period of time as may be specified by the Beneficiary if such Governmental Authority has commenced steps to cause the Property to be sold pursuant to such lien), either (1) pay the claim and remove the lien, or (2) furnish a cash deposit, bond, or such other security with respect thereto as is satisfactory in all respects to the Beneficiary and is sufficient to effect a complete discharge of such lien on the Property.

(e) In the event of a discharge or occurrence of Hazardous Materials on the Property as reported or documented to a governmental agency, the Beneficiary may thereafter, at its option, at intervals of not less than one year, or more frequently if the Beneficiary reasonably believes that further audits taking into account the audits, tests and studies therefore made Hazardous Material or other environmental condition violates or threatens to violate any Environmental Requirement, cause an environmental audit of the Property or portions thereof to be conducted to confirm Trustor's compliance with the provisions of this paragraph, and Trustor shall cooperate in all reasonable thereof to be conducted to confirm and Trustor shall cooperate in all reasonable ways with the Beneficiary connection with any such audit. If such audit discloses that a violation of an Environmental Requirement exists or if such audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, Trustor shall pay all costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit shall, notwithstanding anything to the contrary set forth in this paragraph, be paid by the Beneficiary.

(f) If this Deed of Trust is foreclosed, or if the Trust Property is sold pursuant to the provisions of this Deed of Trust, or if Trustor tenders a deed or assignment in lieu of foreclosure or sale, Trustor shall deliver the Property to the purchaser at foreclosure or sale or to the Beneficiary, its nominee, or wholly-owned subsidiary, as the case may be, in a condition that complies in all respects with all Environmental Requirements. Trustor will defend, indemnify, and hold harmless the Beneficiary, its employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (1) any breach by Trustor of any of the provisions of this paragraph, (2) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Property or on any other property or otherwise, (3) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (4) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (5) any violation of any Environmental Requirement or any policy or requirement of the Beneficiary hereunder. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any other document or instrument now or hereafter executed and delivered in connection with the loan evidenced by the Note and secured by this Deed of Trust, constitute the personal recourse undertakings, obligations and liabilities of Trustor. The obligations and liabilities of Trustor under this paragraph 33 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the debt has been paid in full and irrespective of any foreclosure of this Deed of Trust, sale of the Property pursuant to the provisions this Deed of Trust or acceptance by the of Beneficiary, its nominee or wholly-owned subsidiary of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever. Trustor also agrees that it will avoid the improper use or disposal of hazardous waste and/or toxic substance on, under or about the Property. Trustor acknowledges that a violation of this covenant or any part hereof shall constitute a default under the Loan Documents. This indemnification shall not apply to any Hazardous Materials first arising in, on, under or used at the Property following a foreclosure, delivery of deed-in-lieu of foreclosure or Trustee's sale of the Property.

(g) Notwithstanding anything to the contrary contained in this Deed of Trust or in any other Loan Document, this Deed of Trust does not secure the obligations of Trustor or any guarantor under this Section or under any separate environmental indemnity agreement.

34. **ADDITIONAL LEASE AND IMPROVEMENT REQUIREMENTS.** Trustor covenants that it will require all tenants of the Property in all future leases, lease renewals and lease options, to comply with The Americans With Disabilities Act of 1990 and that provisions requiring this shall be included in all such documents and agreements. Trustor further certifies that the improvements are in compliance with the Americans with Disabilities Act of 1990, and that any future modifications and/or additions to such improvements will be made in conformance with such Act.

35. **NO PARTNERSHIP.** Nothing in this Deed of Trust or any of the other Loan Documents is intended to create nor shall be construed as creating any partnership, joint venture, or any other similar relationship between Trustor and Beneficiary or any other person or entity.

36. **STATE-SPECIFIC PROVISIONS.**

(a) **Waiver of Certain Rights.** With respect to the Property (which Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, Utah Code Ann. § 78B-6-901. Notwithstanding anything to the contrary, Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(b) **Default Interest.** For purposes of Utah Code Ann. § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under any Guaranty or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property, and (ii) Beneficiary may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of either Guaranty in its sole discretion, and in either case Beneficiary may include all 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.

(c) **Reinstatement.** 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 with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. § 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.

(d) **Not Residential Property.** For purposes of Utah Code Ann. § 57-1-25 and Utah Code Ann. § 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

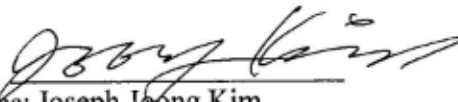
(e) **Amendments to Utah Code.** In the event of any amendment to the provisions of Utah Code Ann. Title 57 or other provisions of Utah Code Ann. referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

37. **INTEGRATION.** PURSUANT TO UTAH CODE ANN. § 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE GUARANTY 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.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

**"TRUSTOR"**

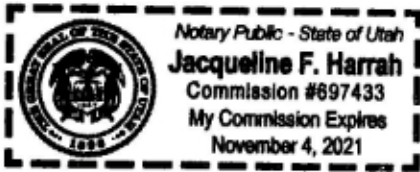
**Kim's Inc.**  
a Utah corporation

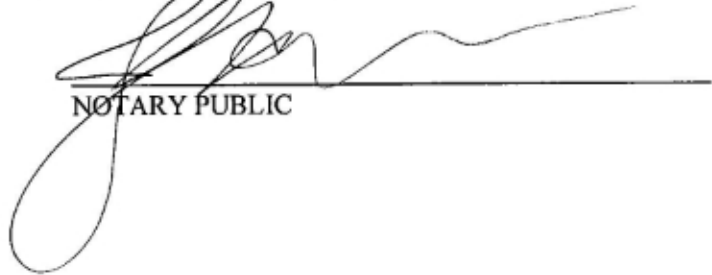
By:   
Name: Joseph Joong Kim  
Title: President

[Acknowledgments on Following Page]

STATE OF UAH )  
COUNTY OF Salt Lake ) : ss.

On the 14<sup>th</sup> day of February, 2019, personally appeared before me, Joseph Joong Kim, an individual, who being duly sworn, acknowledged to me that he executed the same.



  
NOTARY PUBLIC



**EXHIBIT A**

The following described property is located in Davis County, State of Utah:

**PARCEL 1:**

BEGINNING AT THE SOUTHEAST CORNER OF THAT CERTAIN PROPERTY DESCRIBED IN THAT CERTAIN WARRANTY DEED DATED 16 NOVEMBER 1996 AND RECORDED 19TH NOVEMBER 1996 AS ENTRY NO. 1288099 IN BOOK 2065 AT PAGE 1240 OF OFFICIAL RECORDS, SAID POINT BEING LOCATED SOUTH 89°54'50" WEST 680.42 FEET AND NORTH 0°09'21" EAST 290.46 FEET FROM THE EAST QUARTER CORNER OF SECTION 17, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 89°46'06" WEST ALONG THE SOUTH LINE OF SAID PARCEL 286.50 FEET; THENCE NORTH 0°08'48" EAST 65.23 FEET; THENCE SOUTH 89°46'06" EAST 74.13 FEET TO THE SOUTHEAST CORNER OF AN EXISTING BLOCK BUILDING AND AN EXISTING PARTY WALL LINE; THENCE NORTH 0°14'13" EAST ALONG SAID PARTY WALL LINE AND THE EXTENSION THEREOF 346.39 FEET TO A POINT ON THE SOUTH LINE OF THE FOXCREEK APARTMENT COMPLEX; THENCE SOUTH 89°50'48" EAST ALONG SAID SOUTH LINE OF SAID FOXCREEK APARTMENT COMPLEX 211.88 FEET; THENCE SOUTH 0°09'12" WEST 411.91 FEET TO THE POINT OF BEGINNING.

**PARCEL 2:**

A PERPETUAL EASEMENT AS DISCLOSED BY THAT CERTAIN RECIPROCAL UTILITY EASEMENT GRANT AND AGREEMENT RECORDED SEPTEMBER 27, 2006 AS ENTRY NO. 2205241 IN BOOK 4126 AT PAGE 209 OF OFFICIAL RECORDS.

**PARCEL 3:**

THE EASEMENTS AS DISCLOSED BY THAT CERTAIN DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS RECORDS SEPTEMBER 27, 2006 AS ENTRY NO. 2205242 IN BOOK 4126 AT PAGE 220 OF OFFICIAL RECORDS.

**PARCEL 4:**

A BUSINESS PARK SIGN AND EASEMENT AS DISCLOSED BY THAT CERTAIN DECLARATION OF COVENANTS FOR OPERATION AND MAINTENANCE OF BUSINESS PARK SIGN AND EASEMENT RECORDED SEPTEMBER 27, 2006 AS ENTRY NO. 2205243 IN BOOK 4126 AT PAGE 229 OF OFFICIAL RECORDS.

**This is Exhibit "A" to that certain Deed of Trust dated February 14, 2019.**