



credit Rights”, “Noncash Proceeds”, and “Tangible Chattel Paper” (as such terms are defined in the *Utah Uniform Commercial Code* §§ 70A-1-1 *et seq.*) now owned by Grantor or hereafter acquired by Grantor and attached to, located on or used in connection with the above described real property or the Improvements and all renewals, or replacements thereof, whether or not they are or shall be attached to the above described real property or the Improvements in any manner; (3) all building materials and equipment now or hereafter delivered to the above described real property or the Improvements and intended to be incorporated or installed thereon or therein; (4) all plans, specifications, contracts and subcontracts relating to the Improvements or to the above described real property, including all architectural plans and drawings; (5) all permits, licenses, franchises, easements, rights-of-way, certificates and other rights and privileges obtained in connection with the above described real property or the Improvements; (6) all proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein; (7) all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Improvements and any real or personal property described herein; (8) all proceeds resulting from the taking of all or part of the real property described herein or any rights appurtenant thereto including change of grade of streets, curb cuts or other rights of access for any public or quasi-public use under any law, or by right of eminent domain, or by private or other purchase in lieu thereof; (9) all water and water rights, timber, crops and mineral interests on or pertaining to the above described real property, (10) all right, title, and interest of Grantor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the above described real property, and (10) all other interests of every kind and character which Grantor now has or at any time hereafter acquires in and to the above described real and personal property, and all reversionary rights or interests of Grantor with respect to such property, together with any substitutes, replacements, additions, increases, accessions and proceeds of or to all of the above described properties.

It is agreed that to the extent permitted by law, all of the foregoing personal property and fixtures are deemed to be a part of, and affixed to, the real property. The foregoing described real and personal property is hereinafter called the “Mortgaged Property”.

TO HAVE AND TO HOLD the Mortgaged Property and all rights and appurtenances in any manner belonging thereto, unto the Trustee and its successors, substitutes and assigns; and Grantor does hereby bind Grantor, Grantor’s successors and assigns to WARRANT and FOREVER DEFEND the title to the Mortgaged Property unto the Trustee, its successors, substitutes and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This conveyance is made in trust, however, to secure and enforce the payment of that one certain Promissory Note in the original principal amount of **ONE MILLION FIVE HUNDRED THOUSAND AND No/100 Dollars (\$1,500,000.00)**, of even date herewith (the “Note”), executed by Grantor, as borrower, and payable to the order of Beneficiary, as lender, whose address is 1835 South Highway 89, Perry, UT 84302, the Note bearing interest and being payable as therein provided. The term “Loan Documents” as used herein shall mean, collectively, the Note,

this Deed of Trust, and any other instrument or agreement evidencing, securing or pertaining to the Note, as the same may be amended, restated, or otherwise modified from time to time; provided, however, that the Indebtedness secured by this Deed of Trust shall not include (i) Grantor's obligations arising under that certain Environmental Indemnity Agreement, dated as of the date hereof, between Grantor and Beneficiary, or (ii) the obligations under any guaranty executed in favor of Beneficiary with respect to the indebtedness created by the Note.

This Deed of Trust shall secure, in addition to the Note, all sums advanced by Beneficiary to or for the benefit of Grantor pursuant to any covenant or provision of this Deed of Trust. This Deed of Trust shall also secure all renewals, extensions, modifications (including increases) and rearrangements of the Note. Unless any instrument evidencing such indebtedness provides otherwise, it shall bear interest at the same rate as the Note bears from the date of accrual of such indebtedness until paid. Grantor has agreed to pay all costs of Beneficiary in collecting any sums due under the Note or related Loan Documents, as provided in the Note, including reasonable attorney's fees, and such sums shall be due and payable on demand as part of the indebtedness secured hereby. The Note and the indebtedness described in this Paragraph are referred to herein as the "Indebtedness". This Deed of Trust shall also secure all renewals and extensions of any of the Indebtedness; provided, however, that the Indebtedness secured by this Deed of Trust shall not include (i) Grantor's obligations arising under that certain Environmental Indemnity Agreement, dated as of the date hereof, between Grantor and Beneficiary, or (ii) the obligations under any guaranty executed in favor of Beneficiary with respect to the indebtedness created by the Note.

This Deed of Trust, and the lien created hereby, secures the Indebtedness until the Indebtedness is fully paid and until this Deed of Trust is duly released by Beneficiary, and the mere fact of repayment of all the Indebtedness shall not terminate this Deed of Trust lien unless the same be so released by Beneficiary at the request of Grantor, otherwise it shall remain in full force and effect to secure all present and future Indebtedness owing or to become owing by Grantor to Beneficiary. This Deed of Trust and lien shall not affect, or be affected by, any additional security that may be taken as to the Indebtedness and shall secure any renewals, extensions, modifications (including increases) or rearrangements of all or any part thereof. Nothing herein is intended to be, or shall be, construed to obligate Beneficiary to make further advances to Grantor.

All of the Indebtedness shall be payable at the office of the Beneficiary at the address for Beneficiary stated above, or such other place as is designated by Beneficiary by written notice to Grantor. If more than one person executes this Deed of Trust as Grantor, the obligations of each such person are joint and several.

Any references herein to the *Utah Code Annotated*, shall be deemed to be a reference to the current version of such statutes together with any successor or replacement statute or law therefor.

To secure payment of the Indebtedness, Grantor hereby covenants, warrants and represents to, and agrees with, Beneficiary and the Trustee as follows:

1. Payment and Performance. Grantor will pay the Indebtedness, together with the interest thereon, when it becomes due in accordance with the terms of the Note or any other instrument evidencing, securing or pertaining to the Indebtedness. Grantor shall punctually and

completely perform its covenants, obligations and liabilities under the other instruments now or hereafter existing as security for, executed in connection with or related to the Indebtedness, or any part thereof.

2. Title. Grantor has good and indefeasible title in fee simple to the Mortgaged Property and good and marketable title to all other property comprising the Mortgaged Property which is free from encumbrance, superior to the liens securing the Indebtedness other than the lien to secure payment of ad valorem taxes on the Mortgaged Property which are not yet due and payable, and Grantor has full right and authority to make this conveyance.

3. Insurance. Grantor shall, at Grantor's expense, keep the Mortgaged Property insured by policies of insurance issued by companies satisfactory to Beneficiary against loss by fire and hazards included within the term "extended coverage" or "builders risk" as required by Beneficiary, together with such other hazards, casualties, claims and liabilities for injury or damage to persons or property and other contingencies as Beneficiary shall require. Grantor shall annually furnish to Beneficiary receipts, or other documentation satisfactory to Beneficiary, evidencing Grantor's payment of premiums on such policies of insurance. The policies shall be in such amounts and for such periods as Beneficiary shall require. All policies and renewals thereof are to be payable to Beneficiary as the interest of the Beneficiary may appear, by means of a standard mortgagee clause approved by Beneficiary showing Beneficiary as first mortgagee without contribution. All policies shall provide that they shall not be canceled without thirty (30) days prior written notice to Beneficiary. Grantor shall deposit such policies with Beneficiary with premiums paid, as additional security, and Grantor hereby assigns to Beneficiary all of Grantor's rights thereunder, including any return of premium. Such insurance shall be in amounts at least equal to the value of the Improvements and at least sufficient to satisfy all co-insurance requirements of policies covering the Improvements.

Beneficiary shall have the right to hold the policies and renewals thereof, and Grantor shall promptly furnish to Beneficiary all renewal notices and all receipts for paid premiums. At least fifteen (15) days prior to the expiration date of the policies, Grantor shall deliver to Beneficiary renewal policies in form satisfactory to Beneficiary. In no event, and whether or not default hereunder has occurred, shall Beneficiary by the fact of approving, accepting or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Grantor hereby expressly assumes full responsibility therefor and liability, if any, thereunder.

In the event of loss, Grantor shall give immediate written notice to the insurance company and Beneficiary. Grantor authorizes and empowers Beneficiary, at Beneficiary's option and in Beneficiary's sole discretion as attorney-in-fact for Grantor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct Beneficiary's expenses incurred in the collection of such proceeds. Nothing contained in this section shall require Beneficiary to incur any expense or take any action hereunder. Grantor further authorizes Beneficiary, at Beneficiary's option, (a) to hold the balance of such proceeds to be used to reimburse Grantor for the costs of reconstruction or repair of the Mortgaged Property or (b) to apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due, in the order of application as Beneficiary may elect. If the insurance proceeds are held by

Beneficiary to be used to reimburse Grantor for the costs of restoration and repair of the Mortgaged Property, the Mortgaged Property shall be restored to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing. In such event, Beneficiary may, at Beneficiary's option, condition disbursement of the proceeds on Beneficiary's approval of plans and specifications by an architect satisfactory to Beneficiary, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require. If the insurance proceeds are applied to the payment of the Indebtedness, any such application to principal of the Note shall be applied to the principal installments last maturing on the Note, without reducing the amount or extending the time of payment of the remaining installments of principal payable under the Note.

If the Mortgaged Property is sold or the Mortgaged Property is acquired by Beneficiary, all right, title and interest of Grantor in and to any insurance policies and unearned premiums thereon and in and to the proceeds thereof resulting from damage to the Mortgaged Property prior to or after the sale or acquisition shall pass to Beneficiary.

Grantor agrees that if the Mortgaged Property described herein is ever identified by the United States Department of Housing and Urban Development as having special flood hazards as provided in the Flood Disaster Protection Act of 1973, or any amendment(s) thereof, Grantor will provide, within thirty (30) days after receipt of written request from Beneficiary, flood insurance at the expense of Grantor, with the policy of flood insurance to be written by a company acceptable to Beneficiary and with loss payable to Beneficiary. Such flood insurance shall be in an amount at least equal to the amount of the unpaid Indebtedness or the maximum amount of flood insurance that is available, under the National Flood Insurance Program, whichever is less.

4. Taxes and Assessments. Grantor shall pay all taxes and assessments against or affecting the Mortgaged Property as they become due and payable and shall furnish to Beneficiary annually receipts or other documentation satisfactory to Beneficiary evidencing Grantor's payment of such taxes and assessments, or shall provide annually on or before January 31<sup>st</sup> of each year written evidence of exemption from the payment of ad valorem taxes against the Mortgaged Property. If Grantor fails to do so, Beneficiary is authorized (but not required) to pay all taxes and assessments against or affecting the Mortgaged Property, together with all costs and penalties thereon at Grantor's expense. Beneficiary may, at Beneficiary's election, add the amount of the taxes and penalties paid to the principal balance of the Note. Interest will accrue on the new principal advance at the posted rate of the Note. Beneficiary may re-amortize the principal balance and adjust the payment schedule to take into consideration the advance of principal to pay taxes and to keep the Note fully amortizing in accordance with the terms of the Note. Further, at the Beneficiary's sole discretion, an escrow account may be established to escrow for future property taxes, as provided herein. Grantor may, however, in good faith, and in accordance with applicable law, contest the validity thereof by appropriate proceedings. Pending such contest, Grantor shall not be deemed in default hereunder because of non-payment provided that (a) prior to delinquency of the asserted tax or assessment Grantor furnishes the Beneficiary an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated, secured by a deposit in cash or other security acceptable to Beneficiary, or with a surety acceptable to Beneficiary, in the amount of the tax or assessment being contested by Grantor, together with a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in

connection therewith; and (b) Grantor promptly pays any amounts adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final; and (c) in any event, each such contest shall be concluded and the tax assessment, penalties, interest and costs shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

5. Tax and Insurance Reserve. Beneficiary may, at Beneficiary's option, require Grantor to create a fund or reserve for the payment of all insurance premiums, taxes and assessments against or affecting the Mortgaged Property by paying to Beneficiary, on the first day of each calendar month prior to the maturity of the Note, a sum equal to one-twelfth (1/12) of the estimated annual taxes and insurance premiums covering the Mortgaged Property, with such estimates being made by Beneficiary. All such sums shall be held by Beneficiary without interest, unless interest is required by applicable law, for the purposes of paying such premiums, taxes and assessments. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note. Any deficiency shall be paid by Grantor to Beneficiary on or before the date when such premiums, taxes and assessments shall become delinquent. If any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Grantor shall immediately pay all such taxes, except that Grantor shall not be required to pay income tax imposed upon Beneficiary on account of income to Beneficiary from the Note. In the alternative, Grantor may in the event of the enactment of such a law, and must if it is unlawful for Grantor to pay such taxes, prepay the outstanding principal and accrued interest of the Indebtedness for which each such Grantor is liable in full within sixty (60) days after demand is made by Beneficiary.

6. Judgments and Awards; Eminent Domain.

a. All judgments, decrees and awards for injury or damage to all or a part of the Mortgaged Property and all awards pursuant to proceedings for condemnation or transfer in lieu thereof are hereby assigned in their entirety to Beneficiary which may apply them to the Indebtedness in such manner as it may elect. Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquaintances for and to appeal from any such award, judgment or decree. If because of any such judgment, decree or award Beneficiary believes that the payment or performance of any obligation secured by this Deed of Trust is impaired, Beneficiary may, without notice, declare all of the Indebtedness immediately due and payable.

b. Grantor shall not be excused from repairing or maintaining the Mortgaged Property as provided in Section 9 below or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are proceeds available to Grantor or whether any such proceeds are sufficient in amount. The application or release of the proceeds shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

7. Defense of Title. If while this Deed of Trust is in force, the title of the Trustee, or the interest of Beneficiary, in the Mortgaged Property or any part thereof, shall be put into question in any legal or administrative proceeding, Grantor hereby authorizes Beneficiary, at

Grantor's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such title or interest.

8. Additional Indebtedness. If Beneficiary shall expend any money chargeable to Grantor or subject to reimbursement by Grantor under the terms of this Deed of Trust or any other agreements executed in connection with it, Grantor will repay the same to Beneficiary immediately at the place where the Indebtedness is payable, together with interest thereon at the rate of interest payable under the Note from and after the date of Beneficiary's payment. The amount of each payment shall be added to and form a part of the Indebtedness, and shall be secured by this Deed of Trust and, by subrogation, Grantor shall have all rights of the person or entity receiving such payment.

9. Maintenance of the Mortgaged Property and Inspection.

a. Grantor will keep every part of the Mortgaged Property in first class condition and shall promptly make all repairs, renewals and replacements necessary to such end. Grantor will discharge all claims for labor performed and material furnished and will not suffer any lien of builders, mechanics or materialmen to attach to any part of the Mortgaged Property. Grantor shall protect every part of the Mortgaged Property from removal, destruction or damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property will be impaired. Beneficiary and any persons authorized by Beneficiary shall have the right to enter upon and inspect the Mortgaged Property at all reasonable times.

b. Grantor shall pay and promptly discharge, at Grantor's cost and expense, all liens, encumbrances and charges upon the Property, 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 Grantor shall have the right to contest any such claim or lien so long as Grantor previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Annotated Section 38-1a-804 and otherwise complies with the requirements of Utah Code Annotated Section 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Grantor may, 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 Annotated Section 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security.

c. If Grantor shall fail to remove and discharge any such lien, encumbrance or charge, or if Grantor 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 Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account of Grantor and recording a notice of release of lien and substitution of alternate security in the name of Grantor, each as contemplated by Utah Code Annotated Section 38-1a-804 or other applicable law, or otherwise by giving security for such

claim. Grantor 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 interest rate set forth in the Note.

10. Conveyance of Mortgaged Property. If (i) Grantor shall sell, convey, lease, exchange or otherwise transfer, voluntarily or involuntarily, all or any part of the Mortgaged Property or any interest therein (other than items of personality which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new) or (ii) a controlling interest of the ownership of Grantor (if Grantor is not an individual) is sold, conveyed, leased, exchanged or otherwise transferred, voluntarily or involuntarily, then Grantor shall be deemed in default hereunder and Beneficiary, at its option, may without notice, accelerate the Note and declare all unpaid principal and accrued, but unpaid, interest thereon due and payable in full. In such event, if all sums declared due and payable on the Note are not paid within ten (10) days after the same are declared due and payable, then Beneficiary may thereupon exercise all rights and remedies, including foreclosure of the liens herein set forth, of Beneficiary as in the case of the failure to pay, when due, the Indebtedness. Notwithstanding the foregoing, Beneficiary may, at its option, consent to any such sale or other conveyance and condition its consent upon, among other things, the following: (i) an increase in the rate of interest payable under the Note, (ii) payment of all assumption, transfer or other fees which may be required by the Beneficiary, (iii) reimbursement of the Beneficiary for all costs and expenses, including attorney's fees, incurred in connection therewith, (iv) assumption by the proposed transferee of all obligations of the Grantor hereunder and of the maker under the Note without the release of Grantor or such maker, (v) receipt of evidence, satisfactory to Beneficiary, that the proposed transferee is as creditworthy and as capable in managing the Mortgaged Property and (vi) receipt of evidence, satisfactory to Beneficiary, that the proposed transfer will not impair the security of the Beneficiary for repayment of the Indebtedness.

11. Continuing Liability of Grantor. If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Grantor, or in the event a change of ownership in Grantor occurs, Beneficiary may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and to the Indebtedness in the same manner as with Grantor, without in any way affecting or discharging Grantor's liability hereunder or upon the Indebtedness. No sale of the Mortgaged Property and no forbearance on the part of Beneficiary, and no extension of the time for payment of the Indebtedness given by Beneficiary shall operate to release, discharge, modify, change or affect the liability of Grantor or the liability of any guarantors or sureties of Grantor, either in whole or in part.

12. Events of Default. In addition to all other events of default designated herein, it shall be a default hereunder if Grantor shall default in the prompt payment of the Indebtedness or any installment thereof when due (whether at the due dates thereof stipulated in the Note or in any other agreement delivered to Beneficiary in connection with the Indebtedness or by acceleration or otherwise), or if Grantor shall fail to keep or perform any of Grantor's covenants or agreements contained herein, or in any of the documents executed in connection with or as security for the Note, or if Beneficiary discovers that any statement, representation or warranty in the Note, this Deed of Trust or any writing delivered to Beneficiary in connection with the



Indebtedness is false, misleading or erroneous in any material respect; or if Grantor, or any person liable for the Indebtedness including any guarantor or surety for the performance of any obligation hereunder, files a voluntary petition in bankruptcy, makes an assignment for the benefit of any creditor, is adjudicated a bankrupt or insolvent, admits in writing its inability to pay its debts generally as they become due, applies for or consents to the appointment of a receiver, trustee, or liquidator for all or a substantial part of its assets, takes advantage of or seeks any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing, files an answer admitting the material allegations of, or consenting to, or defaulting in, a petition in any bankruptcy, reorganization or other insolvency proceedings, institutes or voluntarily is or becomes a party to any other judicial proceedings intended to effect a discharge of its debts, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any of the rights or powers of Beneficiary granted in the Note, this Deed of Trust or in any other instrument evidencing or securing the Indebtedness, or if an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee or liquidator for Grantor or of all or any substantial part of Grantor's assets, or if Grantor shall fail to satisfy any money judgment against such party at least ten (10) days prior to the date on which such assets may be sold to satisfy such judgment, or if Grantor shall fail to have discharged within a period of ten (10) days after the commencement thereof any attachment, sequestration, or similar proceedings against any of such party's assets, or if the Mortgaged Property is placed under control or in the custody of any court, or if Grantor abandons any of the Mortgaged Property; or if Grantor's existence terminates. Upon the occurrence of any default, Beneficiary, at its option, without notice (except as otherwise provided in any other documents or instruments evidencing or securing the loan evidenced by the Note), may pursue any rights and remedies it may have hereunder or at law or in equity, and Beneficiary may, without limitation, declare the unpaid principal balance of the Note (one or all) and all accrued, unpaid interest thereon immediately due and payable, together with all other sums due and owing under any other Loan Documents.

Notwithstanding anything contained herein to the contrary, Grantor will be entitled to ten (10) days' written notice and opportunity to cure any monetary Event of Default, and thirty (30) days' written notice and opportunity to cure any non-monetary Event of Default, prior to Beneficiary exercising its remedies hereunder (provided, if such non-monetary Event of Default is of such a nature that it cannot be cured within such thirty (30) day period, Grantor will not be in default if Grantor commences the curing of such Event of Default within such thirty (30) day period, and diligently pursues the curing thereof).

13. Performance and Release. If Grantor shall perform faithfully the covenants and agreements herein contained, then this conveyance shall become null and void and shall be released at Grantor's expense; otherwise it shall remain in full force and effect. No release of this Deed of Trust or of the lien, security interest or assignment created and evidenced hereby shall be valid unless executed by Beneficiary.

14. Foreclosure Sale. In the event of a default hereunder, Beneficiary may, at its option, exercise any or all of the remedies set forth below, in addition to any or all of the remedies specified in Section 27:

a. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security,

enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to the Indebtedness, all in such order as Beneficiary may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Mortgaged Property or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale contained herein;

b. Commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* Section 57-1-23, or other applicable law, appoint a receiver as more particularly described in Section 15 below, or specifically enforce any of the covenants hereof;

c. Exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Grantor's interest in the Mortgaged Property to be sold in accordance with *Utah Annotated Code* § 57-1-24 or other applicable law; or

d. Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Indebtedness, or by law.

After the lapse of such time as may then be required by *Utah Annotated Code* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Annotated Code* § 57-1-25 and Section 57-1-26 or other applicable law, Trustee, without demand on Grantor, shall sell the Mortgaged Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Grantor's statutory right under *Utah Annotated Code* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, 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 Annotated Code* § 57-1-27. Trustee shall execute and deliver to the purchaser a trustee's deed, in accordance with *Utah Annotated Code* § 57-1-28, conveying the property so sold, but without any covenant of warranty, express or implied. The recitals in the

trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale 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 trustee's deed.

SECOND: To payment of the obligations secured by the trustee's deed.

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

Upon any sale made under or by virtue of this Section 14, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Mortgaged Property, whether by payment of cash or by credit bid in accordance with *Utah Annotated Code* § 57-1-28(1)(b). In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the obligations of Grantor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

For purposes of *Utah Code Annotated* Section 57-1-28, Grantor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Trust Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Trust Property pursuant to this Deed of Trust.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this 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.

15. Appointment of Receiver; Appointment of Successor Trustee.

a. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Grantor or any one claiming under Grantor, and without regard to the then value of the Mortgaged Property or the interest of Grantor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Grantor hereby irrevocably consents to such appointment and waives notice of any application therefore and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or

similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Mortgaged Property or the date of expiration of any redemption period, unless such receivership is sooner terminated.

b. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Grantor and recorded in the county in which the Mortgaged Property is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

16. Recitals in Trustee's Deed. Grantor agrees that any and all statements of fact or other recitals made in any deed of conveyance given by the Trustee with respect to the identity of Beneficiary, the occurrence or existence of any default hereunder, the acceleration of the maturity of any of the Indebtedness, the requests to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms and manner of sale and receipt, distribution and application of the money realized therefrom, or the proper appointment of a substitute trustee, and, without being limited to the foregoing, with respect to any other act or thing having been duly performed by the Beneficiary or by the Trustee hereunder, shall be taken by all courts of law or equity as conclusive evidence that the statements or recitals state facts and are without further question to be accepted as true and correct, and Grantor hereby ratifies and confirms every act that the Trustee or any substitute trustee may lawfully do in the premises by virtue hereof.

17. Possession by Purchaser. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made in violation of any provision of this Deed of Trust, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement, or rental, lease or other contract.

18. Purchase by Beneficiary. Beneficiary may bid and become the purchaser of all or any part of the Mortgaged Property at any trustee's sale or foreclosure sale hereunder, and Beneficiary may have the amount for which the Mortgaged Property is sold credited on the debt then owing.

19. Other Remedies of Beneficiary. Upon the occurrence of a default under the terms of this Deed of Trust, the Trustee or the Beneficiary shall have the right and power to proceed by a suit or suits in equity or at law for either (a) the specific performance of any covenant or agreement herein contained, or (b) in aid of the execution of any power herein granted, or (c) for a foreclosure hereunder or the sale of the Mortgaged Property under the judgment or decree of any court of competent jurisdiction, or (d) for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Property under the order of a court of competent jurisdiction or under executory or other legal process or (e) for the enforcement of any other appropriate legal or equitable remedy. Grantor agrees to the full extent that it lawfully may do so, that whenever a default occurs hereunder and shall not have been remedied, the Beneficiary shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property

in the possession of the Grantor and may exclude the Grantor and all persons claiming under the Grantor and its or his agents or servants from such property. The Beneficiary may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as the Grantor might at the time do, and may exercise all rights and powers of the Grantor in the name, place and stead of the Grantor as the Beneficiary shall deem best. In the exercise of any of the foregoing rights and powers, Beneficiary shall not be liable to Grantor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

20. Additional Collateral; Extensions and Renewals. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the Indebtedness. The taking of additional security, or the extension, renewal, modification (including an increase) or rearrangement of the Indebtedness shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder. This Deed of Trust as well as any instrument given to secure any renewal, extension, modification or rearrangement of the Indebtedness shall be and remain a first and prior lien on all of the Mortgaged Property not expressly released until the Indebtedness is completely paid.

21. Waiver of Other Laws. To the extent that Grantor may lawfully do so, Grantor agrees that Grantor shall not assert (and hereby expressly waives) any right under any statute or rule of law pertaining to the marshaling of assets, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to sell the Mortgaged Property for the collection of the Indebtedness or the right of Beneficiary under the terms of this Deed of Trust to the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant after reasonable expenses of such sale have first been deducted.

22. Subordinate Mortgages. Grantor will not, without the prior written consent of Beneficiary, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property (hereinafter called "Subordinate Mortgage"). In the event of consent by Beneficiary to a Subordinate Mortgage, or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable under provisions of then applicable law, Grantor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy of the instrument creating the Subordinate Mortgage which shall contain covenants to the effect that:

a. The Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Deed of Trust and each term and provision hereof.

b. If any action or proceeding shall be instituted to foreclose the Subordinate Mortgage (regardless of whether by judicial proceeding or pursuant to the power of sale contained therein), no tenant of any portion of the Mortgaged Property will be named as a party defendant nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Beneficiary.

c. The rents and other income from the Mortgaged Property, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligation secured by this Deed of Trust and then to the payment of maintenance, and operating charges, taxes, assessments and disbursements incurred in connection with the ownership, operation and maintenance of the Mortgaged Property.

d. If any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Beneficiary at the same time as such action or proceeding is commenced.

23. Subrogation/Refinance. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or encumbrance against or affecting the Mortgaged Property, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, regardless of whether such liens, charges and encumbrances are released of record.

24. Limitation of Interest. Reference is hereby made to the provisions of the Note limiting interest contracted for, charged or received by Beneficiary hereunder, or otherwise, to the maximum lawful rate.

25. Non-Waiver and Partial Invalidity. No waiver of any default on the part of Grantor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the Indebtedness shall be considered a waiver of any other or subsequent defaults or breach. No delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers. No exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws while this Deed of Trust is in effect, the legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby. If any of the liens, security interests, assignments of rents or other rights created by this Deed of Trust shall be invalid or unenforceable with respect to a portion of the Indebtedness, the unsecured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured portion, and all payments made on account of the Indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Indebtedness. If the lien created by this Deed of Trust is invalid with respect to a portion of the Mortgaged Property, such partial invalidity shall not affect the validity of such lien with respect to the remainder of the Mortgaged Property.

26. Tenancy at Will. In the event of a trustee's sale hereunder and if at the time of such sale the Grantor occupies the portion of the Mortgaged Property so sold, Grantor shall immediately become the tenant of the purchaser at such sale. Such tenancy shall be from day to day terminable at the will of either tenant or landlord and for reasonable rental per day based on the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible entry and detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property.

27. Security Agreement and Financing Statement. With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code — Secured Transactions of the State of Utah (hereinafter called the “Code”), including, without limitation, “Accounts”, “Cash Proceeds”, “Chattel Paper”, “Collateral”, “Deposit Accounts”, “Electronic Chattel Paper”, “Equipment”, “Fixtures”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter-of-credit Rights”, “Noncash Proceeds”, and “Tangible Chattel Paper”, as defined in the Code, as more particularly described on **Exhibit B** hereto, and all insurance claims and other proceeds or products thereof, whether now owned or existing or hereafter acquired or arising, wherever located and whether in Grantor’s possession and control or in the possession and control of a third party, as well as all leases and contract rights affecting the Mortgaged Property and any proceeds from any of the above, this Deed of Trust shall constitute a security agreement between Grantor, as the Debtor, and Beneficiary, as the Secured Party. Grantor hereby grants to Beneficiary a security interest in such portion of the Mortgaged Property and all leases and accounts affecting the Mortgaged Property and any proceeds from the Mortgaged Property. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies conferred upon secured parties by the Code. Grantor will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary or any modification thereof, and Grantor will pay all costs and expenses of any searches reasonably required by Beneficiary. It is expressly agreed that if upon default Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, then ten (10) days’ notice by Beneficiary to Grantor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Beneficiary may, at its option, dispose of such property in accordance with Beneficiary’s rights and remedies with respect to the real property described herein pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Code. Grantor shall give advance notice in writing to Beneficiary of any proposed change in Grantor’s name, identity or corporate structure and will execute and deliver to Beneficiary prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary’s security interest with respect to any Mortgaged Property described or referred to herein. Certain of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the Real Estate Records of the county in which the Mortgaged Property is situated. The record owner of the Mortgaged Property is Grantor. The mailing addresses of the Grantor, as Debtor, and Beneficiary, as Secured Party, are as stated above.

28. Binding Effect. The covenants herein contained shall be covenants running with the land and shall be binding upon and the benefits and advantages of this Deed of Trust shall inure to, the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto, and any substitute trustee. Grantor represents and warrants that the execution and delivery of this Deed of Trust, the Note, and each and every other instrument executed by Grantor in connection with the loans evidenced by the Note and the performance by Grantor thereunder, are within its powers and have been duly authorized.

29. Meaning of Terms. Whenever used in this Deed of Trust, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders.

30. Titles; Construction of Agreement. All section, subsection or paragraph titles contained in this Deed of Trust are for reference purposes only and this Deed of Trust shall be construed without reference to such titles. This Deed of Trust may be construed as a mortgage, conveyance, assignment, security agreement, pledge, financing statement, contract or any one or more of them in order fully to effectuate the lien hereof.

31. Environmental Compliance. Grantor represents, warrants and covenants that the Mortgaged Property and Grantor's use of the Mortgaged Property will comply with all laws, statutes, ordinances, rules and regulations ("Environmental Laws") of any governmental, quasi-governmental or regulatory authority which relate to the transportation, storage, placement, handling, treatment, discharge, generation, production, removal or disposal (collectively, "Treatment") of any waste, petroleum product (including, without limitation, gasoline and diesel fuel), waste products, poly-chlorinated biphenyls, asbestos, hazardous materials, and/or any other substance, the Treatment of which is regulated by any laws, rules or regulations (collectively, "Waste"), or which otherwise relate to public health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), as amended. Grantor covenants that Grantor will not install any underground storage tanks for gasoline, diesel fuel, or other petroleum products on the Mortgaged Property prior to the release of this Deed of Trust without the written consent of Beneficiary. Grantor represents and warrants that any underground storage tanks presently existing on the Mortgaged Property comply with all applicable federal and state laws and regulations.

Beneficiary (through its officers, employees and agents) at any time and from time to time, after default in this Deed of Trust or under the Note, may employ persons (the "Site Reviewers") to conduct environmental site assessments ("Site Assessments") on the Mortgaged Property to determine whether or not there exists on the Mortgaged Property any environmental condition which might result in any liability, cost or expense to the owner, occupier or operator of the Mortgaged Property arising under the Environmental Laws relating to Waste. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Beneficiary. The Site Reviewers are authorized to enter upon the Mortgaged Property and to perform above and below ground testing (including, without limitation, taking of core samples) to determine environmental damage or presence of Waste in, on or under the Mortgaged Property and such other tests as may be necessary or desirable, in the opinion of the Site Reviewers, to conduct Site Assessments. Grantor will supply to the Site Reviewers such historical and operational information available to Grantor regarding the Mortgaged Property as may be requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. The cost of performing such Site Assessments will be paid by Grantor upon demand of Beneficiary, which, if not paid, will be added to the Indebtedness secured by this Deed of Trust.

Whether or not any Site Assessments are conducted, and regardless of whether or not a default occurs under this Deed of Trust or under the Note and regardless of whether any remedies in respect of the Mortgaged Property are exercised by Beneficiary, Grantor will defend, indemnify and hold harmless Beneficiary and Trustee from any and all liabilities (including strict liability), actions, claims, demands, causes of action, losses, penalties, damages, costs, expenses (including, without limitation, attorneys' fees and expenses, and court costs), suits, costs of any settlement or



judgment of any and every kind or nature, fixed or contingent, asserted against or incurred by Beneficiary or Trustee at any time, and from time to time (whether before or after the release or foreclosure of this Deed of Trust) arising out of (a) the breach of any representation or warranty of Grantor set forth in this section; (b) the failure of Grantor to perform any obligation herein required to be performed by Grantor; (c) Grantor's ownership, construction, occupancy, operation, use and maintenance of the Mortgaged Property; (d) any spill, contamination, discharge, leakage, release or escape of any Waste in, on or affecting the Mortgaged Property; (e) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Mortgaged Property of any Waste; (f) the environmental condition of the Mortgaged Property; or (g) the applicability of any Environmental Laws to any condition on the Mortgaged Property, regardless of whether or not caused by or within the control of Grantor, Beneficiary or Trustee. The representations, covenants, warranties and indemnifications herein contained shall survive the release and/or judicial or non-judicial foreclosure (or transfer in lieu thereof) of the lien of this Deed of Trust.

32. Assignment of Leases and Rents. Grantor hereby assigns to Beneficiary all of Grantor's interest in any existing and future leases, including subleases thereof, and any and all extensions, renewals, modifications, and replacements thereof, upon any part of the Mortgaged Property (the "Leases"), and all rents, issues, profits and income (including security deposits) arising from the Mortgaged Property (the "Rents"). Grantor hereby further assigns to Beneficiary all guaranties of tenants' performance under the Leases. Prior to an Event of Default, Grantor shall have the right, without joinder of Beneficiary, to enforce the Leases, unless Beneficiary directs otherwise.

Pursuant to *Utah Code Annotated 57-26-104* (Chapter 26 of the Title 57 of the *Utah Code Annotated* being entitled "*Utah Uniform Assignment of Rents Act*" (the "Utah Assignment of Rents Act" including any amendments thereto), which is incorporated herein by reference), this Deed of Trust creates an assignment of Rents (the "Rents" as defined in Section 102(12) of the Utah Assignment of Rents Act) arising from the Mortgaged Property in favor of Beneficiary to secure the Indebtedness. Beneficiary shall have the right to enforce the said assignment of rents as provided in Sections 106, 107, 108 and 109 of the Utah Assignment of Rents Act.

33. Grantor's Covenants of Performance as to Leases. Grantor covenants to: (a) perform all of its obligations under the Leases and give prompt notice to Beneficiary of any failure to do so; (b) give immediate notice to Beneficiary of any notice Grantor receives from any tenant or subtenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notice of defaults under residential leases; (c) enforce the tenant obligations under the Leases; (d) defend, at Grantor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party; and (e) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed of Trust and any other encumbrances permitted by this Deed of Trust.

34. Prior Approval for Action Affecting Leases. Grantor shall not, without the prior written consent of Beneficiary, receive or collect Rents more than one month in advance, encumber or assign future Rents, waive or release any obligation of any tenant under the Leases, cancel, terminate or modify any of the Leases, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of

the Leases, except upon default by the tenant thereunder, or permit any assignment of the Leases whereby a tenant is released from its obligations.

35. Rejection of Leases in Bankruptcy. Grantor agrees that no settlement for damages for termination of any of the Leases under the Federal Bankruptcy Code, or under any other federal, state, or local statute, shall be made without the prior written consent of Beneficiary, and any check in payment of such damages shall be made payable to both Grantor and Beneficiary. Grantor hereby assigns any such payment to Beneficiary, to be applied to the Indebtedness as Beneficiary may elect, and agrees to endorse any check for such payment to the order of Beneficiary.

36. Beneficiary's Rights. Beneficiary's acceptance of this assignment shall not, prior to, upon, or after entry upon and taking possession of the Mortgaged Property by Beneficiary or any foreclosure of the lien hereunder or conveyance of the property herein described in lieu thereof, be deemed to constitute Beneficiary a "mortgagee in possession", nor obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the leases, or assume any obligation including security deposits. Beneficiary shall not be liable for any injury or damage to person or property in or about the Mortgaged Property. Beneficiary shall not be obligated to perform, satisfy, or otherwise adhere to any terms of any of the Leases or any covenant of Grantor to any tenant unless Beneficiary agrees to do so, in writing, executed by Beneficiary, which Beneficiary may elect not to do so, in its sole and absolute discretion.

37. Appointment of Attorney-in-Fact. Grantor hereby appoints Beneficiary its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate any Leases to this Deed of Trust.

38. Indemnification. Grantor hereby indemnifies and holds Beneficiary harmless from all liability, damage or expense incurred by Beneficiary from any claims under the Leases, including, without limitation, claims by tenants for security deposits or for rental payments more than one (1) month in advance and not delivered to Beneficiary. All amounts indemnified against hereunder, including reasonable attorneys' fees, if paid by Beneficiary shall bear interest at the maximum lawful rate and shall be payable by Grantor immediately without demand shall be secured hereby.

39. Records of Leases. Upon request by Beneficiary, Grantor shall deliver to Beneficiary executed originals of all Leases and copies of all records relating thereto. There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Mortgaged Property without the prior written consent of Beneficiary. Upon default, Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Beneficiary upon written demand by Beneficiary, without further consent of Grantor, and the tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute payment to Grantor under the Leases.

40. Filing of Encumbrances. The Grantor shall not allow to be filed of record any restrictive covenants, deed restrictions, or subdivision vacating or resubdivision plats affecting the Mortgaged Property without the prior written consent of the Beneficiary.

41. Appraisals. Grantor agrees to immediately upon demand pay the cost of any future appraisal or appraisals required or commissioned by Beneficiary to assure the Beneficiary's collateral position is sufficient.

42. Records and Financial Reports. Grantor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Mortgaged Property and the operation thereof, and will permit all such books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics to be inspected and copied, and the Mortgaged Property to be inspected and photographed, by Beneficiary and its representatives during normal business hours and at any other reasonable times. Without limitation of other or additional requirements in the Note or any of the other Loan Documents, Grantor will furnish to Beneficiary or cause to be furnished to Beneficiary: (i) annual financial statements (balance sheet and income statement) of Grantor, certified and dated by Grantor, before the applicable annual deadline, and (ii) annual tax returns of Grantor, all as specified in the Loan Agreement executed in connection herewith. Each financial statement submitted pursuant to this paragraph shall be prepared in accordance with generally accepted accounting principles, consistently applied, and be certified in writing as true and correct by Grantor. Grantor will also furnish to Beneficiary a copy of the annual United States federal income tax return, including all schedules and any extension(s) of the same, for Grantor, within thirty (30) days of filing such income tax return or extension with the Internal Revenue Service. Grantor will furnish to Beneficiary at Grantor's expense all evidence which Beneficiary may from time to time reasonably request as to compliance with all provisions of the Note or any other Loan Documents relating to the Note. Any inspection or audit of the Mortgaged Property or the books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics of Grantor, or the procuring of documents and financial and other information, by or on behalf of Beneficiary shall be for Beneficiary's protection only, and shall not constitute any assumption of responsibility to Grantor or anyone else with regard to the condition, construction, maintenance or operation of the Mortgaged Property nor Beneficiary's approval of any certification given to Beneficiary nor relieve Grantor of any of Grantor's obligations. Beneficiary may from time to time assign or grant participations in the Indebtedness and Grantor consents to the delivery by Beneficiary to any acquirer or prospective acquirer of any interest or participation in or with respect to all or part of the Indebtedness such information as Beneficiary now or hereafter has relating to the Mortgaged Property, Grantor, any party obligated for payment of any part of the Indebtedness, any tenant or guarantor under any lease affecting any part of the Mortgaged Property and any agent or guarantor under any management agreement affecting any part of the Mortgaged Property.

43. Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Beneficiary to establish or maintain the validity, perfection and priority of the security interests granted in this Deed of Trust. For purposes of such filings, Grantor agrees to furnish any



**AFTER RECORDING**  
**RETURN TO:**  
**C & N EAGLE MOUNTAIN, LLC**  
1835 South Highway 89  
Perry, Utah 84302  
Attn: Ryan Forsyth

**EXHIBIT A**

**Property Address:**  
**4184 E Pony Express Pkwy**  
**Eagle Mountain, Utah, 84005**

**Tax #65:645:0001**

**Legal description**

Lot 1, Plat 3, Carson Commercial Subdivision, Area 0.997 AC, Eagle Mountain City, Utah County, Utah, according to the official plat thereof on file and of record of the Utah County Recorder.

**EXHIBIT B****DESCRIPTION OF PERSONAL PROPERTY**

All of Grantor's assets owned by Grantor that is now or hereafter located on or used in connection with the Mortgaged Property or the Improvements, including, without limitation, "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Deposit Accounts", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-credit Rights", "Noncash Proceeds", and "Tangible Chattel Paper", as defined in the Uniform Commercial Code. Such assets include, without limitation:

(a) All personal property, (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, construction materials and software embedded in any of the foregoing) in which Grantor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Mortgaged Property or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Grantor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Mortgaged Property, Improvements, or such personal property, including without limitation all gaming equipment, video games, arcade games, pool tables, vending machines and ice machines;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Indebtedness remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Mortgaged Property, the Improvements or any other part of the Mortgaged Property, or which may be received or receivable by Grantor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Grantor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants or purchasers of any portion of the Mortgaged Property or Improvements, rights to receive capital contributions or subscriptions from Grantor's partners or shareholders, amounts payable on account of the sale of partnership interests in Grantor or the capital stock of Grantor, accounts and other accounts receivable, deposit accounts, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, and principal, interest, and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments evidencing securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Mortgaged Property, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, all

governmental and private contracts, agreements, permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Mortgaged Property or Improvements, all names under or by which the Mortgaged Property or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks, copyrights, patent and copyright applications and registrations, patterns, designs, drawings, plans and specifications, other proprietary information and intellectual property, and royalties relating in any way to the Mortgaged Property or the Improvements, and all management agreements with respect to the management and operation of the Mortgaged Property, and all goodwill and software in any way relating to the Mortgaged Property or the Improvements.

(e) Grantor's rights under all insurance policies covering the Mortgaged Property, the Improvements, and the other parts of the Mortgaged Property and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Mortgaged Property;

(g) All water, water stock and water rights relating to the Mortgaged Property, including, without limitation, (i) the right to use surface water or groundwater on, under, around or appurtenant to the Property, (ii) all decreed rights; (iii) water rights represented by any permit issued by the Utah Division of Water Rights; (iv) diligence rights or claims; (v) approved applications to appropriate; and (vii) unapproved applications to appropriate;

(h) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Mortgaged Property, the Improvements, or any other part of the Mortgaged Property, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Mortgaged Property, the Improvements, or any other part of the Mortgaged Property, or for any loss or diminution in value of the Mortgaged Property, the Improvements, or any other part of the Mortgaged Property;

(i) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Mortgaged Property and all studies, data, and drawings related thereto; and also all contracts and agreements of Grantor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Mortgaged Property;

(j) All of Grantor's rights as a declarant, developer or otherwise, including, without limitation, all voting and other rights under all covenants, conditions and restrictions affecting the Mortgaged Property or the Improvements;

(k) All Grantor's rights in proceeds of the loan evidenced by the Note;

(l) All of Grantor's rights under any agreements affecting the Mortgaged Property, whether now existing or hereafter arising; and



- (m) All proceeds from sale or disposition of any of the aforesaid collateral.

As used in this Exhibit B the terms “Note”, “Mortgaged Property”, “Mortgaged Property”, and “Improvements”, shall have the meanings set forth in the Deed of Trust to which this Exhibit B is attached.