

When recorded, return to:

Brighton Bank  
Attn: Bruce L. Hunt  
7101 Highland Drive  
Salt Lake City, Utah 84121

Tax Parcel ID No.: 13:042:0013

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

This Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Trust Deed"), is made effective as of November 17, 2008, by DJ SMITH INVESTMENTS, L.C., a Utah limited liability company ("DJ Smith"), WGT AMERICAN FORK, LLC, a Utah limited liability company ("WGT"), and DW ASSOCIATES, L.L.C., a Utah limited liability company ("DW Associates") and together with DJ Smith and WGT, individually and collectively, as the context may imply, "Trustor", whose address is 2469 East Briarcreek Circle, Salt Lake City, Utah 84106; to BRIGHTON BANK, a Utah banking corporation, its successors and assigns (in its capacity as the trustee under this Deed of Trust, the "Trustee") whose address is 7101 Highland Drive, Salt Lake City, Utah 84121; and for the benefit of BRIGHTON BANK, a Utah banking corporation, its successors and assigns (in its capacity as the holder of the Note, as hereinafter defined, and the beneficiary under this Deed of Trust, the "Beneficiary") whose address is 7101 Highland Drive, Salt Lake City, Utah 84121. For good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, Trustor represents, warrants, covenants, and agrees as follows:

**ARTICLE 1: GRANT AND CONVEYANCE OF COLLATERAL**

1.01 **Grant of Lien.** Each Trustor, as its interests may appear, hereby assigns, grants, bargains, sells, conveys, warrants, and transfers to Trustee in trust, for the benefit of Beneficiary, with power of sale and right of entry and possession, all of Trustor's right, title and interest in the following, whether presently owned or hereafter arising (collectively, the "Real Property"):

(a) Trustor's leasehold estate and interest pursuant to that certain "Ground Lease" dated January 12, 2007 (as modified by that "Extension and Acknowledgment of Rent Commencement Date and Modifications to Ground Lease" dated November 9, 2007, the "Ground Lease"), between Nimbus Properties, L.C., a Utah limited liability company, as "Landlord," and DJ Smith, as "Tenant," pursuant to which Landlord agreed to lease to Tenant approximately 4.14 acres of land located in Utah County, Utah, as more fully described in Exhibit A attached hereto and incorporated herein by this reference (the "Land"). Pursuant to the "Extension and Acknowledgment of Rent Commencement Date" described above, WGT was added as a co-Tenant under the Ground Lease. Pursuant to an "Assignment and Assumption of Lease" dated November 10, 2008, DJ Smith and WGT assigned all of their right, title and interest in the Ground Lease to DW Associates, and

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DW Associated agreed to assume their obligations under the Ground Lease, provided such assignment did not operate to release DJ Smith and WGT from their obligations under the Ground Lease. References herein to "Tenant" shall mean DJ Smith, WGT and DW Associates, as their respective interests may appear with respect to the Ground Lease. The leasehold estate and interest of the Tenant under the Ground Lease is sometimes referred to herein as the "Leasehold Estate;" together with

(b) All buildings, structures and improvements now or hereafter located on, attached to or constructed on the Land (collectively, the "Improvements"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Land, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions (collectively, "leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Trust Deed; together with

(f) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(g) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally and any builder's or manufacturer's warranties with respect thereto; together with

(h) All insurance policies pertaining to the Land and any Improvements and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(i) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "Books and Records"); together with

(j) Any other interest of Trustor in the Land, the Improvements, the Ground Lease, the Leasehold Estate or any of the foregoing, whether now owned or hereafter acquired, including without limitation any interest in the Land acquired by Trustor after the date of this Deed of Trust by purchase, acquisition or otherwise, including without limitation pursuant to the right of first refusal or option to purchase set forth in the Ground Lease; and together with

(k) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.02 **Security Interest in Personal Property.** Each Trustor, as its interests may appear, hereby assigns and grants to Beneficiary a security interest in all of Trustor's right, title, and interest, whether presently existing or hereafter arising, in and to and personal property pertaining to the Land, the Improvements and the matters described in Section 1.01 above to the extent the same constitute personal property under applicable law, including without limitation: (a) furnishings, fixtures, equipment, materials, supplies, goods and other personal property now or hereafter located on, attached to, or used in connection with the Real Property or the construction of the Improvements, whether or not stored or located on or off the Land; (b) all accounts, contracts and contract rights (including without limitation architectural, engineering, construction, and building contracts), permits, licenses, plans, performance or payment bonds and general intangibles in any manner pertaining to the Real Property or the construction of the Improvements; (c) all insurance policies, insurance proceeds, unearned premiums, and condemnation awards with respect to the Collateral, as hereinafter defined; and (d) all products and proceeds from any of the foregoing. The foregoing are collectively referred to as the "Personal Property," and the Real Property and the Personal Property are collectively referred to as the "Collateral."

1.03 **Secured Obligation.** This Trust Deed is given for the purpose of securing the following obligations, liabilities, indebtedness and undertakings, whether now owed or hereafter arising, together with any amendment, modification, renewal, extension or restatement made with respect to any of the following obligations (collectively, the "Secured Obligation"):

(a) The payment of all obligations, liabilities and indebtedness (including principal, interest, prepayment fees and other charges) at any time owing under a “Promissory Note” of even or recent date herewith (the “Note”), executed by DW Associates, as maker, and payable to Beneficiary, as payee, in the stated principal amount of One Million Five Hundred Sixty-nine Thousand Eight Hundred and No/100 Dollars (\$1,569,800.00); and

(b) The payment and performance of all obligations, liabilities and indebtedness (including principal, interest, prepayment fees and other charges) of DW Associates under a “Construction Loan Agreement” of even or recent date herewith (the “Loan Agreement”), executed by DW Associates, as Borrower, and Beneficiary, as Lender, in connection with the loan evidenced by the Note (the “Loan”); and

(c) The payment and performance of all obligations of DW Associates or any other party (other than Beneficiary) under any Security Instrument or other Related Document, as such terms are defined in the Loan Agreement; and

(d) The payment and performance of all obligations, liabilities, indebtedness and undertakings of Trustor under this Trust Deed (except those obligations set forth in Section 2.09 below); and

(e) The payment and performance of all future advances and any other loan, extension of credit or other obligation that any Trustor or any successor in ownership of all or part of the Collateral may agree to pay and/or perform (whether as principal, surety or guarantor) to or for the benefit of Beneficiary, when a writing evidences the parties’ agreement that such advance, loan, extension of credit or other obligation is to be secured by this Trust Deed.

(b) All persons who may have or acquire an interest in all or any part of the Collateral will be considered to have notice of, and will be bound by, the terms of the documents evidencing the Secured Obligation and each other agreement or instrument made or entered into in connection with the Secured Obligation. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment and re-borrowing, or which provide that the interest rate on one or more Secured Obligation may vary from time to time. Without limiting the generality of the foregoing, notice is given that the interest rate on the Note is a variable rate.

1.04 **Construction Mortgage.** This Trust Deed constitutes or may constitute a “construction mortgage” within the meaning of Utah Code Section 70A-9a-334(8) or any other applicable law, and is or may be entitled to the benefits thereof.

## **ARTICLE 2: REPRESENTATIONS, WARRANTIES, AND COVENANTS OF TRUSTOR**

2.01 **Construction of Improvements.** In the event Trustor undertakes the construction, remodeling, refurbishing or rehabilitation of any building, structure or other Improvement on the Land, Trustor agrees to diligently pursue the same to completion in a good and workmanlike manner and in accordance with all applicable laws, rules, regulations, building codes and other requirements

of any governmental agency or instrumentality having jurisdiction over the Real Property for the construction of any Improvements thereon, and in accordance with any plans and specifications which have been or may hereafter be approved by Beneficiary.

2.02 **Preservation and Protection of the Collateral.** To preserve and protect the Collateral and Beneficiary's security interest therein, each Trustor, as its interests may appear, hereby agrees and covenants as follows:

A. **Real Property.** Trustor shall keep and maintain the Real Property in good condition and repair. Trustor shall not remove or demolish any building, structure or other improvement on the Land and shall complete or restore promptly and in good and workmanlike manner any Improvement which may be lost, damaged or destroyed without regard to the adequacy of any insurance covering such loss. Trustor shall comply with all laws, rules, regulations, covenants and restrictions which may now or hereafter affect the Real Property or its use and enjoyment and shall not commit or permit any waste thereof.

B. **Personal Property.** Trustor shall keep and maintain any tangible Personal Property in good condition and repair and shall not remove the same from the Land without Beneficiary's prior written consent; provided, however, if no Event of Default has occurred or is continuing, Trustor may remove items of Personal Property in the normal and ordinary course of its business where such removed items do not, individually or in the aggregate, constitute a material portion of the Personal Property.

2.03 **Insurance.**

(a) **Maintenance of Insurance.** Trustor shall obtain and maintain insurance on all tangible Collateral in such amounts, with such deductibles, and insuring against such risks and perils as is customary for persons owning and using similar types of property and as otherwise required by Beneficiary. Without limiting the foregoing, such insurance may include all builder's risk during any period that construction on the Real Property is occurring, multi-peril property damage insurance, comprehensive general liability insurance, flood insurance (if the Real Property is located in a flood hazard area), and such other types of insurance as provided in the Loan Agreement or other Related Documents or as Beneficiary may otherwise reasonably require. Property damage or fire insurance shall include standard extended coverage endorsements on a fair value basis for the full insurable value covering all Improvements in an amount sufficient to avoid application of any coinsurance clause and with a standard mortgagee clause in favor of Beneficiary. Each insurance policy shall include an endorsement providing that coverage in favor of Beneficiary will not be impaired in any way by any act, omission, negligence or default of Trustor or any other person. All insurance policies shall be with companies reasonably acceptable to Beneficiary, shall contain loss payable clauses in favor of Beneficiary (or name Beneficiary as the loss payee), and shall provide that coverage cannot be canceled, modified or diminished in any manner without at least thirty (30) days' prior written notice to Beneficiary. Trustor shall provide evidence reasonably satisfactory to Beneficiary that such insurance has been obtained and remains in place.

(b) Application of Insurance Proceeds. Trustor shall give immediate notice to Beneficiary and the insurer of any loss, damage or casualty that is covered by insurance. If Trustor fails to give such notice, or at any time that an Event of Default is continuing, Beneficiary may make proof of loss on any insurance policy and may settle and adjust all claims thereunder. All insurance proceeds shall be paid to Beneficiary. Whether or not Beneficiary's security is impaired, and without regard to any other collateral securing the Secured Obligation, Beneficiary may, at its election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of any lien affecting the Collateral, to the reduction of any of the Secured Obligation or permit the same to be used for the restoration and repair of the Real Property. If Beneficiary elects to apply the proceeds of any insurance to the restoration and repair of the Real Property, Trustor shall promptly repair or replace the damaged or destroyed improvements in a manner satisfactory to Beneficiary. Beneficiary shall pay or reimburse Trustor for the costs of such repair or restoration in the manner provided in the Loan Agreement for making disbursements under the construction loan described therein or in accordance with Beneficiary's practices and procedures for disbursing construction loan proceeds as may be in effect at such time. If Trustor fails, refuses or neglects to provide insurance or to maintain same, or to renew same in a manner satisfactory to Beneficiary, then Beneficiary may, in its discretion but without any obligation to do so, procure and maintain such insurance as Beneficiary, in its sole discretion, deems reasonable and charge the cost thereof to Trustor, which Trustor agrees to pay to Beneficiary, together with interest at the default interest rate set forth in the Note (the "Default Rate"), upon demand.

2.04 Taxes and Impositions. Trustor shall pay, prior to delinquency, all taxes, assessments (general and special), and ground rents affecting, assessed against, or otherwise related to the Real Property, including without limitation all assessments upon water company stock. If requested by Beneficiary, Trustor shall provide evidence reasonably satisfactory to Beneficiary that such taxes and assessments have been timely paid. After the occurrence of an Event of Default or the failure by Trustor to pay any tax, assessment, insurance premium or ground rent when due, Trustor shall pay to Beneficiary, should Beneficiary so require, on the first day of each month and until the Note is paid in full, an amount equal to one-twelfth of (a) the yearly taxes and assessments which may attain priority over the lien created by this Trust Deed, (b) any ground rents on the Land, (c) assessments of water stock or water rights used in connection with the Land, and (d) the yearly premium installments for insurance required to be provided by Trustor hereunder (collectively, the "Impositions"). The Impositions shall be held in an account in the name of Trustor but over which Beneficiary has exclusive control. Beneficiary shall apply the Imposition to pay said taxes, assessments, insurance premiums, and ground rents, if any. Beneficiary may not charge for so holding and applying the Impositions, analyzing said account or verifying and compiling said assessments and bills, unless Beneficiary pays Trustor interest on the Impositions and applicable law permits Beneficiary to make such a charge. The Impositions are pledged as additional security for the sums secured by this Trust Deed and Trustor hereby grants Beneficiary a lien and security interest therein. If the amount of the Impositions held by Beneficiary, together with the future monthly installments of Impositions payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Trustor's option, either promptly repaid to Trustor or credited to Trustor on monthly installments of Impositions. If the amount of the Impositions held by Beneficiary shall not be sufficient to pay taxes, assessments, insurance

premiums and ground rents as they fall due, Trustor shall pay to Beneficiary any amount necessary to make up the deficiency within thirty (30) days from the date notice is mailed by Beneficiary to Trustor requesting payment thereof.

**2.05 Defense of Title; Discharge of Liens.** Trustor represents and warrants to Beneficiary that Trustor is the owner of good and marketable fee title to the Collateral free and clear of any lien, claim or encumbrance (collectively, the "Liens") except the Lien granted to Beneficiary in this Trust Deed and such other encumbrances permitted in the Loan Agreement or the other Related Documents (collectively, the "Permitted Encumbrances"). Trustor shall not create or grant, or cause or allow by operation of law, any other Lien with respect to the Collateral other than the Lien granted herein to Beneficiary and the Permitted Encumbrances, even if such other Liens may be junior or subordinate to the Lien of Beneficiary. Trustor shall promptly pay, remove and discharge any Lien against the Collateral other than the Permitted Encumbrances, whether or not the same may have priority over the Lien of Beneficiary. Trustor shall promptly give notice to Beneficiary of the assertion of any Lien against the Collateral, or any litigation or proceeding pertaining thereto. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Collateral, or the rights or powers of Beneficiary or Trustee; provided, however, should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, Trustor agrees to pay all costs and expenses incurred by Beneficiary or Trustee, including without limitation costs of evidence of title and reasonable attorney's fees.

**2.06 Performance in Trustor's Stead.** Should Trustor fail to make any payment or to do any act as required herein, then either Beneficiary or Trustee may, but without any obligation so to do and without first giving notice to or making demand upon Trustor and without releasing Trustor from any obligation hereof: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, and in so doing Beneficiary or Trustee are authorized to enter upon the Real Property for such purposes; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest, settle, discharge, or compromise any Lien which in the judgment of either appears to be prior or superior to the Lien granted in this Trust Deed; and (d) in exercising any such powers or rights, incur any liability and expend such sums as it in its absolute discretion may deem necessary therefor, including without limitation the cost of completing any improvements, the cost of evidence of title, and the costs of retaining counsel. Trustor agrees to pay immediately on demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the Default Rate set forth in the Note and the repayment thereof shall be secured hereby.

**2.07 Restrictions on Transfers.** Except as otherwise provided in the Loan Agreement and the other Related Documents, Trustor shall not Transfer (as hereinafter defined) the Collateral or any part thereof without first obtaining the written consent of the Beneficiary. Any such Transfer, if the Beneficiary shall not so consent, shall constitute an Event of Default under the terms of this Trust Deed, the Note, the Loan Agreement and the other Related Documents, and upon the occurrence thereof Beneficiary may cause this Trust Deed to be foreclosed and the Collateral sold in accordance with law. Should Beneficiary give its consent to any Transfer, Beneficiary may require an adjustment of the interest rate with respect to the Loan, the payment of a transfer fee, or such other condition as it deems appropriate. As used herein, a "Transfer" means any voluntary or involuntary

assignment, transfer, conveyance, pledge, encumbrance, hypothecation, sale or other disposition, or an agreement to assign, transfer, convey, pledge, encumber, hypothecate, sell or otherwise dispose of, all or any part of the Collateral. A Transfer shall exclude any lease of the Land or the Improvements, provided such lease shall (a) be at market rates and upon terms and conditions customary for similar transactions; (b) contain a provision that the lease is automatically subordinated to this Trust Deed and the Lien of Beneficiary herein, provided that Beneficiary may, in its sole discretion, elect to treat this Trust Deed as subordinate to the lease by giving written notice to the lessee of such lease at any time prior to the date the Real Property, or any part thereof, may be sold pursuant to a foreclosure action under this Trust Deed; (c) if the lease is for a term of more than five (5) years, shall contain a provision for reasonable rental adjustments not less than every five (5) years; and (d) shall not constitute an assignment of the Ground Lease or any right of Trustor thereunder, other than the right to sublease the Land and the Improvements. For purposes of this Section 2.07, a Transfer shall be deemed to have occurred if (i) Trustor assigns, sells, transfers or conveys substantially all or substantially all of its assets; (ii) Trustor enters into any merger, consolidation or similar reorganization where the resulting or surviving entity is not Trustor; (iii) more than 20% of any ownership, profit or equity interest in any Trustor, however the same may be classified, is transferred to any person who is not an owner or holder of equity interests of such Trustor as of the date hereof; provided, however, that a Transfer shall not include a transfer of any ownership, profit or equity interest in a Trustor to the spouse, child, grandchild or other member of the immediate family of Douglas F. Smith or William G. Tate or to any trust created for the benefit of any such persons, provided that after effecting such transfer Douglas F. Smith or William G. Tate, as applicable, retains effective operational control of the applicable Trustor; or (iv) any agreement or option is entered into which encompasses any of the foregoing.

2.08 **Further Assurances.** Trustor shall promptly execute and deliver to Beneficiary such other documents and instruments as Beneficiary may reasonably request to further effect or perfect Beneficiary's security interest in the Collateral, including without limitation UCC-1 financing statements. Trustor shall do such other acts as Beneficiary may reasonably request to carry out more effectively the purposes of this Trust Deed and to subject any property intended to be covered or intended to be covered by this Trust Deed to the Lien of Beneficiary created herein.

2.09 **Hazardous Materials.** As used herein, "Hazardous Materials" means (a) "hazardous waste" as defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U. S. C. Section 6901 et seq.), including any future amendments thereto, and regulations promulgated thereunder; (b) "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U. S. C. Section 9601 et seq.), including any future amendments thereto, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) underground storage tanks, whether empty or filled or partially filled with any substance; (f) any substance the presence of which is or becomes prohibited by any federal, state, or local law, ordinance, rule, or regulation; and (g) any hazardous or toxic substance, material, or waste which under any federal, state, or local law, ordinance, rule, or regulation requires special handling or notification in its collection, storage, treatment or disposal. Trustor represents and warrants to Beneficiary that except as disclosed in an environmental site assessment, if any, provided to Beneficiary in connection with the Loan, to the best of Trustor's knowledge (a) no Hazardous Material has been stored, or improperly used, disposed of, discarded,



dumped, or abandoned by any person or entity on, in or under the Land or the Improvements, and (b) Trustor has complied with all applicable federal, state and local laws, rules, ordinances and regulations relating to the storage, transportation, and disposal of Hazardous Materials on, in or under the Land or the Improvements. Trustor hereby agrees to indemnify, hold harmless and defend (by counsel of Beneficiary's choice) Trustee and Beneficiary, and their respective directors, officers, employees, agents, successors and assigns, from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including without limitation reasonable attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of (x) the presence on or under the Real Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under, from, or affecting the Land, or (y) any activity carried on or undertaken on or off the Land, whether prior to or during the term of the Loan, and whether by Trustor or any predecessor in title or any employees, agents, contractors or subcontractors of Trustor or any predecessor in title, or any third persons at any time occupying or present on the Land, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Land. The foregoing indemnity shall further apply to any residual contamination on or under the Land, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. Trustor hereby acknowledges and agrees that, notwithstanding any other provision of this Trust Deed or any of the other Loan Documents to the contrary, the obligations of Trustor under this Section 2.09 shall be unlimited personal obligations of Trustor and shall survive any foreclosure under this Trust Deed, any transfer in lieu thereof, and any satisfaction of the obligations of Trustor in connection with the Loan. Trustor acknowledges that Beneficiary would not extend the Loan but for the personal liability undertaken by Trustor for the obligations under this Section 2.09.

### ARTICLE 3: MUTUAL COVENANTS AND AGREEMENTS

3.01 **Condemnation Awards**. Should the Real Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary shall be entitled to all compensation, awards, and other payments for relief therefor (collectively, the "Awards"). Beneficiary 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. All Awards, and all rights of action and proceeds with respect thereto, are hereby assigned to Beneficiary as part of the Collateral. Beneficiary may, after deducting therefrom all its expenses, including attorney's fees pertaining to such proceedings, apply any Award against the Secured Obligation. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

3.02 **Plats, Easements and Reconveyances**. At any time and from time to time upon written request of Beneficiary, payment of its fees, and presentation of this Trust Deed and the Note for endorsement (in case of full reconveyance), without affecting the liability of any person for the

payment of the Secured Obligation, Trustee may (a) consent to the making of any map or plat of the Land; (b) join in granting any easement or creating, any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the Real 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. Trustor agrees to pay reasonable Trustee’s fees for any of the services mentioned in this Section 3.02.

#### ARTICLE 4: ASSIGNMENT OF LEASES AND RENTS

4.01 **Assignment**. As additional security for the Secured Obligations, Trustor hereby assigns to Beneficiary all leases, subleases, rents, issues, profits and income with respect to or in any manner arising from the Collateral or the use or enjoyment thereof, whether the same are presently existing or hereafter created or arising. The assignment granted herein shall be deemed an absolute assignment. Nevertheless, until Trustor shall default in the payment of any of the Secured Obligation or in the performance of any agreement or undertaking in this Trust Deed, the Note, the Loan Agreement or any other Related Document, Trustor shall have a revocable license to collect and use all such rents, issues, royalties, profits, and income which become payable, and have been collected, prior to such default. Upon the occurrence of a default under this Trust Deed, the Note, the Loan Agreement or any other Related Document, Trustor’s license to collect any of such moneys shall automatically cease and Beneficiary shall have the right to collect all such rents, royalties, issues, profits and income. Beneficiary may enforce such right with or without taking possession of the Collateral, whether or not Beneficiary has commenced any foreclosure or similar proceedings, and without regard to the adequacy of any other Collateral to satisfy the Secured Obligations or the danger of any of the Collateral being lost, damaged, destroyed, or consumed. Beneficiary may settle, release or discharge any claim or dispute with respect to any lease, sublease, rent, royalty, profit or other income with respect to the Real Property upon such terms and conditions as Beneficiary may agree without releasing or discharging Trustor of its obligations under this Trust Deed or any party to any of the other Related Documents from their obligations thereunder. Beneficiary may endorse and deposit any check or other item evidencing payments received under this Section 4.01, either in its own name or that of Trustor. The 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 liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

#### ARTICLE 5: EVENTS OF DEFAULTS; REMEDIES

5.01 **Events of Default**. Any of the following shall constitute an “Event of Default” under the terms of this Trust Deed:

A. The occurrence of an event of default under or with respect to the Note, the Loan Agreement or any other Related Document.

B. Any representation or warranty made by Trustor in this Trust Deed is untrue in any material respect at the time when made.

C. Any bankruptcy, insolvency, reorganization, receivership, liquidation, dissolution, arrangement for the benefit of creditors or similar proceeding is instituted by or against any Trustor, any other person who may be directly or indirectly liable for any portion of the Secured Obligation, or with respect to any of the Collateral; provided, however, if such proceedings are involuntary, Trustor shall have forty-five (45) days from the commencement thereof to have the same dismissed.

D. A default by Trustor in the performance of any other duty, obligation, covenant or undertaking contained in this Trust Deed or in any other agreement between Trustor and Beneficiary, whether presently existing or hereafter arising, other than a matter constituting a separate and distinct event of default under this Trust Deed, and the continuance of the same unremedied for a period of twenty (20) days after written notice by Beneficiary or Trustee.

5.02 **Remedies**. Upon the occurrence of an Event of Default hereunder, the entire Secured Obligation shall become immediately due and payable without notice, presentment or demand of any kind, all of which are hereby waived by Trustor. Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Collateral or any part thereof. Beneficiary may, in its own name or that of Trustor, sue or otherwise collect any rents, issues, profits, or other income constituting part of the Collateral, including those past due and unpaid. Beneficiary may settle, discharge, abandon, compromise, or otherwise deal with any claim pertaining to the Collateral upon such terms and conditions as Beneficiary in good faith deems necessary or appropriate. Any sums or monies collected by Beneficiary, less the costs and expenses of operation and collection, including reasonable attorney's fees, shall be applied against the Secured Obligations in such order or priority as Beneficiary may determine. The entering upon and taking possession of the Collateral, the collection of such rents, issues, and profits, or the collection of proceeds of fire and other insurance policies or condemnation awards, and the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, nor shall it invalidate any act done pursuant to such notice. Beneficiary shall have all of the rights and remedies of a secured creditor under applicable law. The failure on the part of Beneficiary to promptly enforce any right or pursue any remedy hereunder shall not operate as a waiver of such right or remedy; the waiver by Beneficiary of any default shall not constitute a waiver of such right or remedy; and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

5.03 **Foreclosure or Exercise of Power of Sale**. Upon the occurrence of an Event of Default Beneficiary may elect to foreclose this Trust Deed as a mortgage or to exercise the power of sale granted herein. The initial election by Beneficiary to pursue a judicial foreclosure or trustee's sale shall not constitute an election of remedies or otherwise prevent Beneficiary from stopping or suspending the pursuit of a particular remedy and, instead, pursuing any other remedy. In pursuing any remedy, Beneficiary shall comply with, and be entitled to the benefits of, all applicable laws at the time such remedy is pursued, including, without limitation, those applicable to the exercise of the

power of sale pursuant to the trust deed statutes then in effect; provided, however, if the trust deed statutes have been repealed or the remedies therein have been, in Beneficiary's opinion, curtailed, then Beneficiary may, if the statutes so permit, apply applicable law at the time this Trust Deed is executed.

5.04 **Foreclosure Expenses.** Trustor acknowledges that, as a result of any default hereunder, Trustee or Beneficiary may elect to obtain title or foreclosure reports, title policies in favor of purchasers at any foreclosure or trustee's sale, appraisals, environmental site assessments, engineering reports, the services of an attorney, and other professional services to determine the condition, status, and value of the Collateral or to assist it in any foreclosure proceeding or the exercise of the power of sale granted herein. Such costs and expenses are a foreseeable consequence of an Event of Default and the pursuit of Beneficiary's remedies as a result thereof, whether incurred in connection with a judicial foreclosure, trustee's sale, or deed-in-lieu of foreclosure. All such costs and expenses incurred in connection therewith shall be secured by this Trust Deed and Trustor agrees to reimburse Trustee or Beneficiary for the same upon demand, together with interest thereon at the Default Rate.

5.05 **Power of Sale.** If Beneficiary exercises the power of sale granted herein and under the trust deeds statutes of the state in which the Land is located, Trustee and/or Beneficiary shall follow the procedures required by law for the exercise of such power of sale. At the date, place and time designated for the trustee's sale, Trustee, without demand on Trustor, shall sell the Real Property either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such 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 or, with the consent of Beneficiary, within a reasonable time thereafter. The Trustee may also sell any or all of the Personal Property at such sale, either separately or with the Real Property. The person conducting the sale may for any cause he deems expedient, postpone the sale from time to time until the sale shall be completed in accordance with applicable law, 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 or as otherwise required by law. Trustee shall execute and deliver to the purchaser its Trustee's Deed conveying the Real Property so sold (and a bill of sale for any Personal Property), but without any covenant or warranty, express or implied. The recitals in the Trustee's Deed of any matters or fact shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale and purchase all or any part of the Real Property or Personal Property. Trustor hereby agrees that any notice of sale with respect to the Real Property may also include notice of sale of any Personal Property, and agrees that such notice shall be commercial reasonable in all respects and for all purposes, including those of the Uniform Commercial Code. Trustee shall apply the proceeds of the sale to the payment of (1) the costs and expenses of exercising the power of sale and of sale, including the payment of the reasonable Trustee's and attorney's fees and other costs and expenses actually incurred by the Trustee and the Beneficiary pursuant to Section 5.04 above; (2) the cost of any evidence of title procured in connection with such sale and revenue stamps on any Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest from date of expenditure as provided herein; (4) the Secured Obligations and all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee,

in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place or dispose of the same as otherwise permitted by law.

5.06 **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 Real Property or some part thereof is situated, a substitution of trustee as required by law. 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.

5.07 **Security Agreement under Uniform Commercial Code.** This Trust Deed is also intended to be a security agreement within the meaning of the Utah Uniform Commercial Code (the “UCC”) with respect to the Personal Property and any other part of the Collateral which may be classified as property subject to Article 9 of the UCC (collectively, the “UCC Property”), and Trustor hereby assigns and grants to Beneficiary a lien and security interest in the UCC Property. Trustor hereby authorizes Beneficiary to file any UCC statement or other document (including without limitation amendments and continuation statements) with any governmental entity for the purpose of perfecting Beneficiary’s security interest in the Personal Property, and in so doing, Beneficiary may describe the Personal Property specifically or generally, including as “all personal property” of Trustor that is located on, attached to, or otherwise relates to the Real Property. Beneficiary shall have all rights and remedies of a secured creditor with respect to the UCC Property as provided by law. Upon the occurrence of an Event of Default hereunder, Beneficiary shall be entitled to all of the benefits of, and may pursue any remedy with respect to, the UCC Property in accordance with the provisions of the UCC. Trustor agrees to cooperate with Beneficiary by assembling the UCC Property and make it available to Beneficiary at such place as Beneficiary may reasonably designate. Trustee and/or Beneficiary may sell any UCC Property at the time of, and in connection with, and foreclosure or trustee’s sale of the Real Property.

5.08 **Financing Statement and Fixture Filing.** This Trust Deed is intended to be a financing statement and fixture filing pursuant to the UCC with respect to the UCC Property. By filing this Trust Deed in the official records of the county recorder in which the Land is located, this Trust Deed shall also constitute a fixture filing satisfying the requirements of the UCC. For the foregoing purposes, Trustor is the “debtor”; Beneficiary is the “secured party”; the addresses of the debtor and secured party are those of the Trustor and Beneficiary set forth at the beginning of this Trust Deed; the real property upon which the UCC Property is located is the Land; the owner of the Land is Nimbus Properties, L.C., a Utah limited liability company; and this Trust Deed is to be filed in the official records of the Utah County Recorder, State of Utah.

## ARTICLE 6: GENERAL PROVISIONS

6.01 **Successors and Assigns.** This Trust Deed shall apply to, inure to the benefit of, and shall be binding on, Trustor, Trustee, and Beneficiary, and their respective heirs, legatees, devisees, administrators, executors, successors and assigns, subject, however, to the restrictions on assignment contained herein.

6.02 **Joint and Several Liability.** In the event more than one person is signing as Trustor, the term "Trustor" shall refer to such persons individually and collectively, as the context may imply, and all obligations, liabilities and undertakings of such Trustors herein shall be joint and several.

6.02 **Acceptance by Trustee.** Trustee accepts the trust created by this Trust Deed when this Trust Deed has been duly executed, acknowledged, and made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust, mortgage, or security agreement, or of any action in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

6.03 **Choice of Laws.** This Trust Deed shall be construed according to the laws of the State of Utah.

6.04 **Request for Notice of Default.** Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at its address set forth on the first page of this Trust Deed; provided, however, such notices may, at the election of Trustee or Beneficiary, be sent to any other address for Trustor which Trustee or Beneficiary reasonably and good faith deem to be correct and appropriate. Trustor may change the address to which notice shall be sent only by sending to Beneficiary, by certified or registered mail, return receipt requested, written notice requesting that notice be sent to a different address.

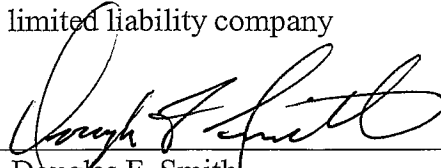
6.05 **Indemnification.** Trustor agrees to indemnify, defend and hold harmless Trustee, Beneficiary, and their respective directors, officers, employees and agents, from and against any loss, liability, demand, judgment, cost, expense or other claim made or asserted against them with respect to, or in any manner arising from, this Trust Deed (collectively, the "Indemnified Claims"); provided, however, the Indemnified Claims shall not include any matter arising solely from the gross negligence or willful misconduct of the person seeking such indemnification. Without limiting the foregoing, Indemnified Claims include those matters arising from any unsafe or dangerous condition of the Collateral; any injury sustained by any licensee, employee, or invitee on the Real Property; and any environmental claim made or arising with respect to the condition of the Real Property, any hazardous substance or material located thereon, or the protection of the environment or the public health. This Section 6.05 shall survive the exercise of any right or remedy provided herein, the payment of the Secured Obligations, and the release, reconveyance, or discharge of this Trust Deed or the security interests granted herein.


6.06 **Additional Leasehold Provisions.** The interest of Trustor in the Land is presently that of a tenant under the Ground Lease. The terms and conditions set forth in Exhibit B with respect to leasehold interests are incorporated herein by this reference.

*[Remainder of page intentionally left blank.  
Signature page follows immediately.]*

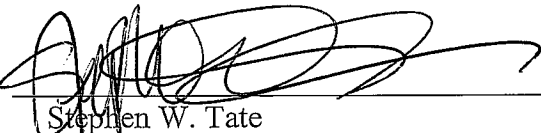
IN WITNESS WHEREOF, the Trustor has caused these presents to be executed as of the day and year first above written.

DW ASSOCIATES, L.L.C.,  
a Utah limited liability company

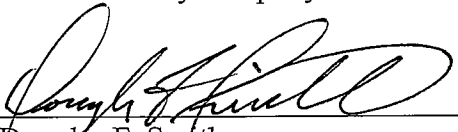
By:   
\_\_\_\_\_  
Douglas F. Smith  
Its Manager

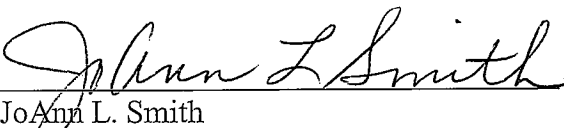
By:   
\_\_\_\_\_  
Warren G. Tate  
Its Manager

WGT AMERICAN FORK, LLC,  
a Utah limited liability company

By:   
\_\_\_\_\_  
Stephen W. Tate  
Its Manager

DJ SMITH INVESTMENTS, L.C.,  
a Utah limited liability company

By:   
\_\_\_\_\_  
Douglas F. Smith  
Its Manager

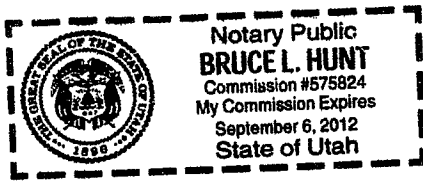
By:   
\_\_\_\_\_  
JoAnn L. Smith  
Its Manager

ACKNOWLEDGMENTS

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

On the 26 day of November, 2008, before me, the undersigned notary public, personally appeared DOUGLAS F. SMITH, the Manager of DW Associates, L.L.C., a Utah limited liability company, personally known to me or whose identity has been satisfactory established, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said limited liability company, having all requisite authority to so act.

[seal]

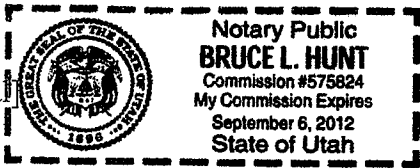


[Signature]  
Notary Public

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

On the 21 day of November, 2008, before me, the undersigned notary public, personally appeared WARREN G. TATE, the Manager of DW Associates, L.L.C., a Utah limited liability company, personally known to me or whose identity has been satisfactory established, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said limited liability company, having all requisite authority to so act.

[seal]



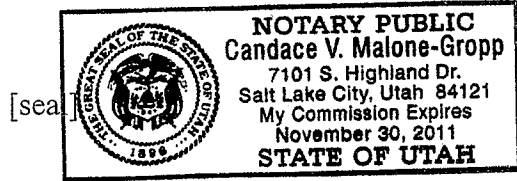
[Signature]  
Notary Public

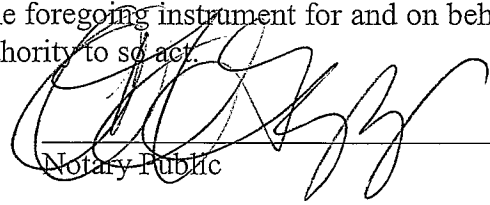
STATE OF UTAH )  
 : ss.  
COUNTY OF Salt Lake )

On the 1 day of ~~November~~ December, 2008, before me, the undersigned notary public, personally appeared STEPHEN W. TATE, the Manager of WGT American Fork, LLC, a Utah limited liability company, personally known to me or whose identity has been satisfactory established, who duly



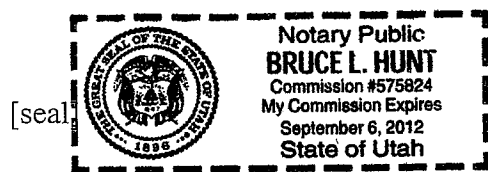
acknowledged to and before me that he signed the foregoing instrument for and on behalf of said limited liability company, having all requisite authority to so act.




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

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

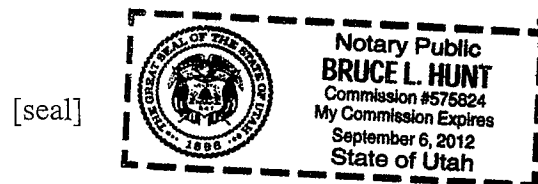
On the 26 day of November, 2008, before me, the undersigned notary public, personally appeared DOUGLAS F. SMITH, the Manager of DJ Smith Investments, L.C., a Utah limited liability company, personally known to me or whose identity has been satisfactory established, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said limited liability company, having all requisite authority to so act.



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

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

On the 26 day of November, 2008, before me, the undersigned notary public, personally appeared JOANN L. SMITH, the Manager of DJ Smith Investments, L.C., a Utah limited liability company, personally known to me or whose identity has been satisfactory established, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said limited liability company, having all requisite authority to so act.



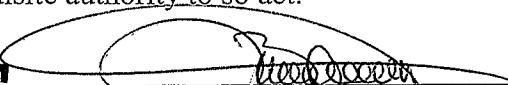
  
\_\_\_\_\_  
Notary Public

EXHIBIT A

(Legal Description of the Land)

The following real property is located in Utah County, Utah:

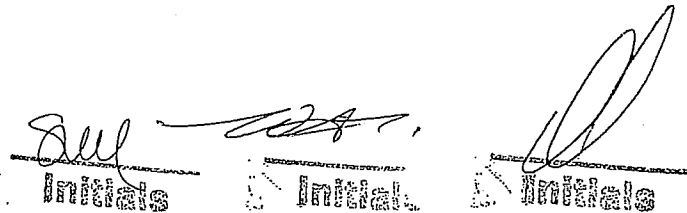
Commencing South 24'14" West 142.81 feet and West 769.59 feet from the Northeast corner of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian; thence South 53'36" East 593.20 feet; thence North 69°43'42" West .28 feet; thence 69°57'50" West 344 feet; thence 62°12'58" West 27.09 feet; thence North 04'37" East 316.05 feet; thence South 89°28'19" East 7.15 feet; thence North 00°31'00" East 149.54 feet; thence South 89°29'00" East 329.25 feet to the point of beginning.

Also described by survey legal as follows:

A parcel of land in the Northeast Quarter of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian, Utah County, Utah, more particularly described as follows:

Ⓢ

Commencing at the Northeast earner of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian, Utah County, Utah; thence North 89°53'25" West along the North line of said section 771.29 feet and South 143.72 feet to the real point of beginning; thence South 00°56'47" East 593.72 feet to the North right of way line of I-15; thence along said right of way the following 2 courses and distances; (1) North 69°57'50" West 344.14 feet; (2) thence North 62°12'58" West 27.09 feet; thence North 00°04'37" East 316.05 feet; thence South 89°28'19" East 7.15 feet; thence North 00°31'00" East 150.09 feet to the South line of Main Street; thence South 89°29'00" East along said South line 328.55 feet to the real point of beginning.

  
Initials      Initials      Initials

**EXHIBIT B**

## (Leasehold Deed of Trust Addendum)

The following terms and conditions are included as additional provisions to the Trust Deed to which it is attached. Capitalized terms used in this addendum that are not defined herein shall have the meanings given to them in the Trust Deed.

1. Trustor will pay or cause to be paid all rent and other charges required under the Ground Lease as and when the same are due. Trustor will keep, observe and perform, or cause to be kept, observed and performed, all of the other terms, covenants, provisions and agreements of the Ground Lease on the part of the tenant thereunder to be kept, observed and performed. Trustor will not in any manner, cancel, terminate or surrender, or permit any cancellation, termination or surrender of the Ground Lease, in whole or in part, without the written consent of Beneficiary. Trustor shall not, either orally or in writing, modify, amend or permit any modification or amendment of any of the terms of the Ground Lease in any respect without the prior written consent of Beneficiary. Any attempt on the part of Trustor to exercise any action prohibited herein without such written consent of Beneficiary shall be null and void and of no effect.

2. Trustor will do or cause to be done all things necessary to preserve and keep unimpaired the rights of Trustor as the "Tenant" under the Ground Lease, and to prevent any default under the Ground Lease, or any termination, surrender, cancellation, forfeiture or impairment thereof. If Trustor fails to make any payment required to be made by the "Tenant" pursuant to the provisions of the Ground Lease or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Ground Lease, Trustor agrees that Beneficiary may (but shall not be obligated to), after notice to Trustor (provided that no such notice shall be required to be given after the occurrence of an Event of Default hereunder) take any action on behalf of Trustor, to make or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Land and take all such action thereof as may be necessary therefor, to the end that the rights of Trustor in and to the Leasehold Estate created by the Ground Lease shall be kept unimpaired and free from default. Any costs or expenses incurred by Beneficiary pursuant to this Paragraph 2, and all money so expended by Beneficiary, together with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Trustor to Beneficiary promptly upon demand by Beneficiary and shall be added to the indebtedness and secured by the Trust Deed. Without limiting the foregoing, Beneficiary shall have, in addition to any other remedy of Beneficiary, the same rights and remedies in the event of non-payment of any such sum by Trustor as in the case of a default by Trustor in the payment of any sums due under the Note.

3. Trustor will enforce the obligations of the landlord under the Ground Lease (the "Landlord") to the end that Trustor may enjoy all of the rights granted to it under the Ground Lease, Trustor will promptly notify Beneficiary in writing of any default by the Landlord or by Trustor in the performance or observance of any of the terms, covenants and conditions on the part of the Landlord or Trustor, as the case may be, to be performed or observed under the Ground Lease. Trustor will promptly advise Beneficiary in writing of the occurrences of any of the events of default

enumerated in the Ground Lease and of the giving of any notice by the Landlord to Trustor of any default by Trustor in performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of the Trustor to be performed or observed and will deliver to Beneficiary a true copy of each such notice. If, pursuant to the Ground Lease, the Landlord shall deliver to Beneficiary a copy of any notice of default given to Trustor, such notice shall constitute full authority and protection to Beneficiary for any action taken or omitted to be taken by Beneficiary in good faith in reliance thereon to cure such default.

4. If any action or proceeding shall be instituted to evict Trustor or to recover possession of the Land or for any other purpose affecting the Ground Lease or this Trust Deed, Trustor will, immediately upon service thereof on or to Trustor, deliver to Beneficiary a true copy of each petition, summons, complaint, notice of motion, order to show cause and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

5. Trustor covenants and agrees that unless Beneficiary shall otherwise expressly consent in writing, the fee title to the property demised by the Ground Lease and the leasehold estate shall not merge but shall always remain separate and distinct, notwithstanding the union of said estates either in the Landlord, Trustor or a third party by purchase or otherwise. Notwithstanding the foregoing to the contrary, if Trustor acquires the fee title or any other estate, title or interest in the Land, this Trust Deed shall attach to and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, deed of trust, mortgage, or conveyance, become and be subject to the lien of and covered by this Trust Deed.

6. No release or forbearance of any of Trustor's obligations under the Ground Lease, pursuant to the Ground Lease, or otherwise, shall release Trustor from any of its obligations under this Trust Deed, including its obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease, to be kept, performed and complied with by the "Tenant" therein.

7. Upon the occurrence of an Event of Default, Trustor shall not make any election or give any consent or approval (other than the exercise of a renewal right or extension right pursuant to Paragraph 9 of this Exhibit B) for which a right to do so is conferred upon Trustor as the "Tenant" under the Ground Lease without Beneficiary's prior written consent. In case of an Event of Default under this Trust Deed, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which have been assigned for collateral purpose to Beneficiary, shall vest in and be exercisable solely by Beneficiary.

8. Trustor will give Beneficiary prompt written notice of the commencement of any arbitration or appraisal proceeding under and pursuant to the provisions of the Ground Lease. Beneficiary shall have the right to intervene and participate in any such proceeding and Trustor shall confer with Beneficiary to the extent which Beneficiary deems necessary for the protection of Beneficiary. Upon the written request of Beneficiary, if an Event of Default exists, Trustor will exercise all rights of arbitration conferred upon it by the Ground Lease. Trustor shall select an

arbitrator who is approved in writing by Beneficiary; provided, however, that if at the time any such proceeding shall be commenced, Trustor shall be in default in the performance or observance of any covenant, condition or other requirement of the Ground Lease, or of this Trust Deed, on the part of Trustor to be performed or observed, Beneficiary shall have, and is hereby granted, the sole and exclusive right to designate and appoint on behalf of Trustor the arbitrator or arbitrators, or appraiser, in such proceeding.

9. Trustor may exercise any option or right to renew or extend the term of the Ground Lease without the prior written consent of Beneficiary. Trustor shall give Beneficiary simultaneous written notice of the exercise of such option or right to renew or extend, together with a copy of the instrument given to the Landlord under the Ground Lease exercising such option or right, and, thereafter, shall promptly deliver to Beneficiary a copy of any acknowledgment by the Landlord with respect to the exercise of such option or right. If such option or right has not been exercised as aforesaid, then not less than sixty (60) days prior to the expiration of the right to exercise such option to renew or extend, Trustor shall give Beneficiary written notice specifying the date, term and manner for which such option or renewal is to be exercised. Within fifteen (15) business days of written demand by Beneficiary, Trustor shall exercise any such option or renewal which is necessary to extend the term of the Ground Lease beyond the term of Loan secured by this Trust Deed or to comply with any law affecting Trustor or Beneficiary or which is necessary, in Beneficiary's reasonable judgment, to preserve the value of the security intended to be afforded by this Trust Deed. Trustor shall promptly provide evidence of such exercise of such option or right to Beneficiary's reasonable satisfaction. If Trustor fails to so exercise any such option or right or in the event of any default hereunder which is continuing beyond the applicable cure periods, Trustor hereby agrees and grants to Beneficiary all right and authority to exercise such option in the name of Trustor or in its own name. Nothing contained herein shall affect or limit any rights of Beneficiary granted under the Ground Lease.

10. The lien of this Trust Deed shall attach to all of Trustor's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), including, without limitation, all of Trustor's rights to remain in possession of the Land.

11. Trustor shall not, without Beneficiary's prior written consent, elect to treat the Ground Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. § 365(h)(1). Any such election made without Beneficiary's consent shall be void.

12. Trustor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Trustor's claims and rights to the payment of damages arising from any rejection of the Ground Lease by Landlord or any other fee owner of the Land under the Bankruptcy Code. Beneficiary shall have the right to proceed in its own name or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, either in its own name or in the name of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect to the lessor or any fee owner under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the obligations secured by this Trust Deed shall have been satisfied and discharged in full.

Any amounts received by Beneficiary as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of Beneficiary (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section and then in accordance with the provisions of this Trust Deed. Trustor shall promptly make, execute, acknowledge and deliver, in form and substance satisfactory to Beneficiary, all such additional instruments, agreements and other documents, as may at any time hereafter be required by Beneficiary to effectuate and carry out the assignment made pursuant to this Paragraph 12.

13. If pursuant to Subsection 365(h)(2) of the Bankruptcy Code, 11 U.S.C. § 365(h)(2), Trustor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by the Landlord or any fee owner of any of their obligations under the Ground Lease after the rejection by the Landlord or any fee owner of the Ground Lease under the Bankruptcy Code, Trustor shall, prior to effecting such offset, notify Beneficiary of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of Beneficiary, would constitute a breach of the Ground Lease, and in the event of such objection, Trustor shall not effect any offset of the amounts so objected to by Beneficiary. Neither Beneficiary's failure to object as aforesaid nor any objection relating to such offset shall constitute an approval of any such offset by Beneficiary.

14. If any action, proceeding, motion or notice shall be commenced or filed in respect of the Landlord or any fee owner, the Land or the Ground Lease in connection with any case under the Bankruptcy Code, Beneficiary shall have the option, exercisable upon notice from Beneficiary to Trustor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Trustor in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents or other documents reasonably required by Beneficiary in connection therewith. Trustor shall, upon demand, pay to Beneficiary all costs and expenses (including attorneys' fees) paid or incurred by Beneficiary in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Trustor as aforesaid shall be secured by the lien of this Trust Deed and shall be added to the principal amount of the indebtedness secured hereby. Trustor shall not commence any action, suit, proceeding or case, or file any application or make any motion (unless such motion is for the purpose of protecting the Ground Lease and its value as security for the obligations secured by this Trust Deed), in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed.

15. Trustor shall, after obtaining knowledge thereof, promptly notify Beneficiary of any filing by or against the Landlord or other fee owner of the Land of a petition under the Bankruptcy Code. Trustor shall promptly deliver to Beneficiary, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

16. If in any bankruptcy or reorganization proceeding in which Trust is the debtor or debtor-in-possession, Trustor determines to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, Trustor shall give Beneficiary not less than thirty (30) days' prior notice of the

date on which Trustor shall apply to the Bankruptcy Court for authority to reject the Ground Lease. Beneficiary shall have the right, but not the obligation, to serve upon Trustor within such thirty (30) day period a notice stating that Beneficiary demands that Trustor assume and assign the Ground Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code. If Beneficiary shall serve upon Trustor the notice described in the preceding sentence, Trustor shall not seek to reject the Ground Lease and shall comply with the demand provided for in the preceding sentence.

17. Notwithstanding anything to the contrary contained herein, this Trust Deed shall not constitute an absolute assignment of the Ground Lease and Beneficiary shall not have any liability or obligation under the Ground Lease by reason of its acceptance of this Trust Deed.