

When Recorded, Return To:

Bell Bank
3800 American Blvd. W. Suite 1450
Bloomington, MN 55431
Attn: Damon Peters
Tax Parcel No. 07-20-400-010
155176-GTB

13928261 B: 11326 P: 3629 Total Pages: 37
04/07/2022 02:46 PM By: zjorgensen Fees: \$40.00
TRD- TRUST DEED
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

Space above for County Recorder's Use

**DEED OF TRUST, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT**

As of April 6, 2022 (the "Effective Date"), **BRHP JV I LLC**, a Delaware limited liability company (hereinafter called "Grantor"), whose mailing address is 222 S. Main Street, Suite 1760, Salt Lake City, Utah 84101, in consideration of the debt and trust hereinafter mentioned, does hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN and CONVEY unto **Cottonwood Title Insurance Agency, Inc.**, a Utah corporation, 1996 East 6400 South, Suite 120 Salt Lake City, UT 84121, Trustee (as hereinafter defined), Grantor's right, title and interest in and to the following described property (all of which is sometimes referred to collectively herein as the "Property"):

(i) the real property situated in Salt Lake County, Utah, which is more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right, title and interest of Grantor in and to (a) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the Improvements (as hereinafter defined); (b) any strips or gores between the real property and abutting or adjacent properties; and (c) all water and water rights, timber, crops and mineral interests pertaining to the real property (such real estate and other rights, titles and interests being hereinafter sometimes called the "Land");

(ii) all buildings, covered garages, air conditioning, towers, open parking areas, structures and other improvements of any kind or nature, and any additions, alterations, betterments or appurtenances thereto, (the "Improvements") now or hereafter situated placed or constructed on the Land;

(iii) all fixtures, systems, machinery, building and construction materials, of every kind and character, now owned or hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, but without limiting the

foregoing, any and all fixtures, equipment, machinery, systems, facilities and apparatus for heating, ventilating, air conditioning, refrigerating, plumbing, sewer, lighting, generating, cleaning, storage, incinerating, waste disposal, sprinkler, fire extinguishing, communications, transportation (of people or things, including, but not limited to, stairways, elevators, escalators and conveyors), data processing, security and alarm, laundry, food or drink preparation, storage or serving, gas, electrical and electronic, water, and recreational uses or purposes; all tanks, pipes, wiring, conduits, ducts, doors, partitions, rugs and other floor coverings, wall coverings, windows, drapes, window screens and shades, awnings, fans, motors, engines and boilers; but excluding inventory and other trade or business movable personal property (all of which are herein sometimes referred to together, as the "Accessories");

(iv) all (a) plans and specifications for the Improvements; (b) contracts relating to the Land, or the Improvements or the Accessories or any part thereof, including without limitations, contracts for the purchase or sale of any of the Property; (c) deposits, (including, but not limited to, earnest money deposits or letters of credit under purchase or sale contracts, Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Land, or the Improvements or the Accessories or any part thereof, refundable or reimbursable tap fees, commitment fees or development costs), and any deposits or reserves hereunder or under any other Loan Document (as hereinafter defined) for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles (including, but not limited to, trademarks, trade names and symbols), notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the Land, or the Improvements or the Accessories or any part thereof; (d) permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Land, or the Improvements or the Accessories or any part thereof; (e) Leases (as hereafter defined), Rents (as hereafter defined) and other benefits of the Land, the Improvements and the Accessories; (f) awards, remunerations, reimbursements, settlements and/or compensation made by any governmental authority, including, but not limited to those for municipal utility district or other utility costs; and (g) other properties, rights, titles and interests, if any, specified in any Section or any Article of this Deed of Trust as being part of the Property; and

(v) all (a) proceeds of or arising from the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii) and (iv), including, but not limited to, proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused; and (b) other interests of every kind and character, and proceeds thereof, which Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs (i), (ii), (iii) and (iv) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests, but expressly excluding inventory and other trade or business movable personal property. In the event the estate

of Grantor in and to any of the Property is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Grantor such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Grantor had fee simple title to said property as of the date of execution hereof.

TO HAVE AND TO HOLD the Property, unto Trustee and Trustee's successors, substitutes or assigns, in trust and for the uses and purposes herein set forth, forever, together with all rights, privileges, hereditaments and appurtenances in anywise appertaining or belonging thereto, subject only to the Permitted Exceptions (herein so called) listed on Exhibit B attached hereto (to the extent that the same are valid, subsisting and affect the Property), and Grantor, for Grantor and Grantor's successors, hereby agrees to warrant and forever defend, all and singular, the Property unto Trustee and Trustee's successors or substitutes in this trust against the claim or claims of all persons claiming or to claim the same or any part thereof, subject, however, as aforesaid.

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ARTICLE I

THE OBLIGATION

Section 1.01. *Beneficiary*. This Deed of Trust [as used herein, the expression “this Deed of Trust” shall mean this Deed of Trust, Assignment of Rents, Security Agreement - Financing Statement], and all rights, title, interest, liens, security interests, powers and privileges created hereby or arising by virtue hereof, are given to secure payment and performance of the Obligation (as hereinafter defined), including the indebtedness described in Section 1.02 hereof payable to the order of Bell Bank, a North Dakota corporation (“Beneficiary”), whose mailing address is 3800 American Blvd W., Suite 1450, Bloomington, MN 55431. The word “Beneficiary,” as used herein, shall mean Beneficiary named in this Section and all subsequent holders of the Note (as hereinafter defined) at the time in question.

Section 1.02. *Obligation*. The word “Obligation,” as used herein, shall mean all of the indebtedness, obligations and liabilities described as follows:

(a) the indebtedness evidenced by that certain Promissory Note (the “Note”) of even date herewith, incorporated herein by this reference, executed by Grantor, payable to the order of Beneficiary in the principal amount of THIRTY-EIGHT MILLION THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$38,350,000.00), bearing interest as therein specified, with interest and principal being payable as provided in the Loan Agreement (as defined below) with a final payment of all remaining principal and accrued interest due and payable on or before **March 31, 2025** (the “Maturity Date”) as the same may be extended to March 31, 2026 and March 31, 2027 pursuant to the express terms and conditions of the Loan Agreement;

(b) all indebtedness, obligations and liabilities described in or arising pursuant to the provisions of this Deed of Trust, that certain Construction Loan Agreement of even date herewith by and between Grantor and Beneficiary (“Loan Agreement”), any other Loan Document described in the Loan Agreement as amended, modified or restated, ratified, confirmed, extended or supplemented (herein referred to individually as a “Loan Document” and collectively as the “Loan Documents”), and including the term “Obligations” as defined in the Loan Agreement;

(c) any and all renewals, modifications, rearrangements, amendments, extensions or increases of all or any part of the indebtedness, obligations and liabilities described or referred to in Subsections 1.02(a) and 1.02(b) preceding; and

(d) the performance of all covenants and agreements set forth in this Deed of Trust and the other Loan Documents.

Grantor, and each party at any time claiming an interest in or lien or encumbrance against the Property, agrees that all advances made by Beneficiary from time to time under any of the Loan Documents, and all other portions of the Obligation herein referred to, shall be secured by this Deed of Trust with priority as if all of the same had been advanced, had arisen or become owing or performable on the date of this Deed of Trust. No reduction of the outstanding principal balance under

the Note shall extinguish, release or subordinate any rights, titles, interests, liens, security interests, powers or privileges intended, created or arising hereunder or under any other Loan Document, and this Deed of Trust shall remain in full force and effect as to any subsequent advances or subsequently arising portions of the Obligation without loss of priority until the Obligation is fully paid, performed and satisfied, all agreements and obligations, if any, of Beneficiary for further advances have been terminated and this Deed of Trust has been released of record by Beneficiary.

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ARTICLE II

CERTAIN REPRESENTATIONS, WARRANTIES AND
COVENANTS OF GRANTOR

Section 2.01. Warranties and Representations. Grantor represents and warrants that, as of the date hereof:

- (a) Grantor has full right and authority to execute and deliver this Deed of Trust;
- (b) Grantor has, in Grantor's own right, good and indefeasible title in fee simple to the Property free from any encumbrance superior to the indebtedness hereby secured, subject only to the Permitted Exceptions;
- (c) no part of the Property is Grantor's homestead of any type or character and this Deed of Trust is and shall continue to be a valid and enforceable lien and security interest against the Property until the Obligation is fully discharged;
- (d) Grantor is solvent and no proceeding under any Applicable Bankruptcy Laws (as hereinafter defined) is pending or threatened by or against Grantor as a debtor;
- (e) if Grantor is a corporation, partnership, limited liability company, trust or other entity, Grantor is and shall until the Obligation is fully discharged continue to be (i) duly organized and validly existing in good standing under the laws of the state of Grantor's organization, and in good standing under Utah law, (ii) in compliance with all conditions prerequisite to Grantor's lawfully doing business in the State of Utah and (iii) possessed of all power and authority necessary to own, encumber and operate the Property;
- (f) all Loan Documents executed by Grantor have been duly authorized, executed and delivered by Grantor, and the obligations thereunder and the performance thereof by Grantor in accordance with their terms are within Grantor's powers and are not in contravention of any law, agreement or restriction to which Grantor or the Property is subject;
- (g) the loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Grantor, and is not for personal, family, household or agricultural purposes;
- (h) Grantor's mailing address as set forth herein is true and correct;
- (i) all reports, financial statements and other information heretofore furnished to Beneficiary by or on behalf or at the request of Grantor with respect to the Property or Grantor, are, and all of the same hereafter furnished to Beneficiary will when furnished be, true, correct and complete in all material respects and do not, or will not, omit any fact, the inclusion of which is necessary to prevent the facts contained therein from being materially misleading;
- (j) since the date of the financial statements of Grantor heretofore furnished to Beneficiary, no material adverse change has occurred in the financial condition of Grantor, and, except as heretofore disclosed in writing to Beneficiary, Grantor has not incurred any material liability, direct or indirect, fixed or contingent; and
- (k) the Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable laws and regulations (or, if not

subdivided, no subdivision or platting of the Land is required under applicable laws or regulations), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.

Section 2.02. Covenants. Grantor covenants, agrees, and undertakes to:

(a) pay and perform the Obligations in accordance with the terms of the Loan Documents, time being of the essence;

(b) pay or cause to be paid, before delinquent, all taxes and assessments of every kind or character in respect of the Property or any part thereof and, from time to time upon request of Beneficiary, to furnish to Beneficiary evidence satisfactory to Beneficiary of the timely payment of such taxes and assessments and governmental charges (the word “assessments” as used herein includes not only assessments and charges by any governmental body, but also all other assessments and charges of any kind, including, but not limited to, assessments or charges for any utility or utility service, easement, license or agreement upon, for the benefit of, or affecting the Property, and assessments and charges arising under subdivision, condominium, planned unit development or other declarations, restrictions, regimes or agreements), in each case subject to Grantor’s right to contest the same as provided in the Loan Agreement;

(c) in accordance with the terms and provisions of the Loan Agreement: (1) purchase policies of insurance with respect to the Property, with such insurers, in such amounts, with such endorsements and covering such risks as shall be satisfactory to Beneficiary; (2) deliver copies of such policies of insurance to Beneficiary; and (3) pay, or cause to be paid, all premiums for insurance required hereunder;

(d) comply in all material respects with all federal, state, or municipal laws, rules, ordinances and regulations applicable to the Property and Grantor’s ownership, use and operation thereof, and comply in all material respects with all, and not violate in any material respect any, easements, restrictions, agreements, covenants and conditions with respect to or affecting the Property or any part thereof, in each case subject to Grantor’s right to contest the same as provided in the Loan Agreement;

(e) at all times maintain, preserve and keep the Property in good repair and condition, and from time to time, make all necessary and proper repairs, replacements and renewals, and not commit or permit any material physical waste on or of the Property, and not to do anything to the Property that may impair its value and not permit any condition to exist on the Property that would permit an insurer to cancel or increase the premium for any insurance policy or invalidate such policy in whole or in part;

(f) promptly pay all bills for labor and materials incurred in connection with the Property and never permit to be created or to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest on a parity with or superior to any of the liens or security interests hereof, in each case subject to Grantor’s right to contest the same as provided in the Loan Agreement;

(g) from time to time, at the request of Beneficiary, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record and/or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and perform such further acts and provide such further assurances as may be reasonably necessary, desirable or proper, in Beneficiary's reasonable good faith opinion, to carry out more effectively the purposes of this Deed of Trust and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property, *provided that* any such execution or performance is not inconsistent with the terms of the Loan Documents; (iii) execute, acknowledge, deliver, procure, and file and/or record any document or instrument (including specifically, but without limitation, any financing statement) deemed advisable by Beneficiary to protect the liens and the security interests herein granted against the rights or interests of third persons; and (iv) cause the Loan Documents requested by Beneficiary and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and re-filed in such manner and in such places as Trustee or Beneficiary shall reasonably request. Grantor shall pay to Beneficiary, upon demand, all reasonable out-of-pocket costs and expenses incurred by Beneficiary in connection with any of the foregoing described in clauses (i) through (iv) above including but not limited to, recording, filing, re-recording and re-filing taxes, documentary stamp taxes, reasonable attorneys' fees, title insurance costs, and other charges;

(h) continuously maintain Grantor's existence and right to do business in the State of Utah;

(i) at any time 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 Obligation or any part thereof, within thirty (30) days after written demand is delivered by Beneficiary to Grantor, pay all such taxes; provided that, if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax, and 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 Obligation in full within sixty (60) days after demand therefor by Beneficiary;

(j) at any time and from time to time, furnish promptly upon the request of Beneficiary, a written statement or affidavit, in form satisfactory to Beneficiary, stating, to Grantor's actual knowledge, the unpaid balance of the Obligation and that there are no offsets or defenses against full payment of the Obligation and the terms hereof, or, if there are any such offsets or defenses, specifying them;

(k) not cause or permit the Accessories or any part thereof, to be removed from the county and state where the Land is located, except items of the Accessories 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;

(l) except as otherwise permitted under the Loan Agreement: not seek or acquiesce in a zoning reclassification of any portion of the Property or grant any easement, dedication, plat or restriction (or allow any easement to become enforceable by prescription) covering any portion of the Property, or remove, release or terminate any easement, dedication, plat or restriction previously approved by Beneficiary, without Beneficiary's prior written consent;

(m) not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal or production of any mineral, natural element, compound or substance from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof and agree to defend, indemnify, save and hold Beneficiary, its officers, agents, servants, employees, successors and assigns harmless from any and all claims, liabilities, losses or expenses which may be incurred by Beneficiary, and any and all other expenses or losses, either direct or consequential, which are attributable, or alleged in any way to be attributable, to the development and exploitation of mineral rights in, on or around the Property by Grantor or any other party acting through or with the permission of Grantor; and

(n) subject to the provisions of Section 8.07 hereof, pay on demand all reasonable and bona fide out-of-pocket costs, fees and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by Beneficiary or Trustee to third parties incident to this Deed of Trust or any other Loan Document (including, but not limited to, reasonable attorneys' fees and expenses in connection with the negotiation, preparation and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Beneficiary or Trustee is a party involving this Deed of Trust or the Property) or incident to the enforcement of the Obligation or the exercise of any right or remedy of Beneficiary under any Loan Document; provided however, that in no event will Trustor be required to pay Trustee any fees or compensation in excess of amounts permitted by Utah Code Annotated § 57-1-21.5.

(o) prior to commencement of any construction, Grantor shall visibly post signage at the Property containing the name and contact information of Grantor and a brief description of the Project, to the extent required under applicable law.

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ARTICLE III

EVENT OF DEFAULT AND REMEDIES OF BENEFICIARY

Section 3.01. *Event of Default.* An “Event of Default” under the terms of, and as defined in, the Loan Agreement shall constitute an “Event of Default” hereunder.

Section 3.02. *Beneficiary's Remedies Upon an Event of Default.* Upon the occurrence and during the continuance of an Event of Default, Beneficiary may, at Beneficiary's option, do any one or more of the following, in each case, to the extent allowable under applicable law:

(a) If Grantor has failed to keep or perform any covenant whatsoever contained in this Deed of Trust, Beneficiary may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Obligation, and Grantor promises, within thirty (30) days after Grantor's receipt of written demand, to pay to Beneficiary, at the place where the Note is payable, all sums so advanced or paid by Beneficiary, with interest from the date when paid or incurred by Beneficiary at the rate provided in the Note for past due payment. No such payment by Beneficiary shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens and security interests securing the payment of any debt, claim, tax or assessment for the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Beneficiary may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or any other action other than any notice required under the Loan Agreement or other Loan Documents, all of which are hereby waived by Grantor and all other parties obligated in any manner whatsoever on the Obligation, declare the entire unpaid balance of the Obligation immediately due and payable, and upon such declaration, the entire, unpaid balance of the Obligation shall be immediately due and payable.

(c) Beneficiary may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Trustee is hereby authorized and empowered and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Property or any part thereof, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of applicable Utah law governing sales of Utah real property under powers of sale conferred by deeds of trust.

(ii) In addition to the rights and powers of sale granted under the preceding provisions of this Subsection, if default is made in the payment of any installment of the Obligation, Beneficiary may, at Beneficiary's option, at once or at any time

thereafter while any matured installment remains unpaid, without declaring the entire Obligation to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Property subject to such unmatured indebtedness and to the rights, powers, liens, security interests and assignments securing or providing recourse for payment of such unmatured indebtedness, in the same manner, all as provided in the preceding provisions of this Subsection. Sales made without maturing the Obligation may be made hereunder whenever there is a default in the payment of any installment of the Obligation beyond any applicable notice and cure period, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this Subsection, the unmatured balance of the Obligation or the rights, powers, liens, security interests and assignments securing or providing recourse for payment of the Obligation.

(iii) Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Obligation is paid and performed in full. It is intended by each of the foregoing provisions of this Subsection that Trustee may, after any request or direction by Beneficiary, sell not only the Land and the Improvements, but also the Accessories and other interests constituting a part of the Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(iv) After any sale under this Subsection, Trustee shall make good and sufficient deeds, assignments and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that, in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, or as to the occurrence or existence of any Event of Default, or as to the acceleration of the maturity of the Obligation, or as to the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee, and, without being limited by the foregoing, as to any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

(d) Beneficiary may, or Trustee may upon written request of Beneficiary, proceed by suit or suits, at law or in equity, to enforce the payment and performance of the Obligation in accordance with the terms hereof and of the Note or the Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction.

(e) Beneficiary, as a matter of right and without regard to the sufficiency of the security, and without any showing of insolvency, fraud or mismanagement on the part of Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Property or any part thereof, and of the income, rents, issues and profits thereof.

(f) Beneficiary may enter upon the Land, take possession of the Property and remove the Accessories or any part thereof, subject to compliance with applicable law, and, in connection therewith, without any responsibility or liability on the part of Beneficiary, take possession of any property located on or in the Property which is not a part of the Property and hold or store such property at Grantor's expense.

(g) Beneficiary may require Grantor to assemble the Accessories or any part thereof, and make them available to Beneficiary at a place to be designated by Beneficiary which is reasonably convenient to Grantor and Beneficiary.

(h) After notification, if any, hereafter provided in this Subsection, Beneficiary may sell, lease or otherwise dispose of, at the office of Beneficiary or on the Land or elsewhere, as chosen by Beneficiary, all or any part of the Accessories, in their then condition, or following any commercially reasonable preparation or processing, and each Sale (as used in this Subsection, the term "Sale" means any sale, lease, or other disposition made pursuant to this Subsection) may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any Sale it shall not be necessary to exhibit the Accessories or part thereof being sold. The Sale of any part of the Accessories shall not exhaust Beneficiary's power of sale, but Sales may be made from time to time until the Obligation is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection, or reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection, shall be sent to Grantor and to any other person entitled under the Code (as hereinafter defined) to notice; provided that if the Accessories or part thereof being sold are perishable, or threaten to decline rapidly in value, or are of a type customarily sold on a recognized market, Beneficiary may sell, lease or otherwise dispose of the Accessories, or part thereof, without notification, advertisement or other notice of any kind. It is agreed that notice sent or given not less than ten (10) calendar days prior to the taking of the action to which the notice relates, is reasonable notification and notice for the purposes of this Subsection.

(i) Beneficiary may surrender the insurance policies maintained pursuant to the terms hereof or any part thereof, and receive and apply the unearned premiums as a credit on the Obligation and, in connection therewith, Grantor hereby appoints Beneficiary as agent and attorney-in-fact for Grantor to collect such premiums.

(j) Beneficiary may retain the Accessories in satisfaction of the Obligation whenever the circumstances are such that Beneficiary is entitled to do so under the Code.

(k) Beneficiary may buy the Property or any part thereof at any public sale or judicial sale.

(l) Beneficiary may buy the Accessories or any part thereof at any private sale, if the Accessories or part thereof being sold are a type customarily sold in a recognized market or a type subject to widely distributed standard price quotations.

(m) Beneficiary shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document, or under the Code, or otherwise.

(n) Beneficiary may apply the reserves, if any, required by Section 7.01 hereof toward payment of the Obligation.

Section 3.03. *Beneficiary as Purchaser.* Beneficiary may bid and being the highest bidder, become the purchaser of any or all of the Property at any trustee's or foreclosure sale hereunder and shall have the right to credit the amount of the bid upon the amount of the Obligation, in lieu of cash payment. If Beneficiary is the purchaser of the Property or any part thereof, at any sale thereof, whether such sale be under the power of sale hereinabove vested in Trustee or upon any other foreclosure of the liens and security interests hereof, or otherwise, Beneficiary shall, upon any such purchase, acquire good title to the Property so purchased, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Obligation and Beneficiary elects that no merger occur.

Section 3.04. *Other Rights of Beneficiary.* Should any part of the Property come into the possession of Beneficiary, whether before or after an Event of Default, Beneficiary may use or operate the Property for the purpose of preserving it or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Beneficiary in respect of the Property. Grantor covenants promptly to reimburse and pay to Beneficiary within thirty (30) days after Grantor's receipt of Beneficiary's written demand, at the place where the Note is payable, the amount of all reasonable out-of-pocket expenses (including the cost of any insurance, taxes or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Beneficiary at the rate provided in the Note for past-due principal, and all such expenses, costs, taxes, interest and other charges shall be and become a part of the Obligation. It is agreed, however, that the risk of loss or damage to the Property is on Grantor, and Beneficiary shall have no liability whatsoever for decline in value of the Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured, except damage arising from Beneficiary's gross negligence or willful misconduct.

Section 3.05 *Possession After Foreclosure.* If the liens or security interests hereof shall be foreclosed by power of Trustee's sale, by judicial action or otherwise, the purchaser at any such sale shall receive, as an incident to Trustee's ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof, subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a

reasonable rental per day, due and payable daily, based upon the value of the portion of the Property so occupied), and anyone occupying such portion of the Property after demand is made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived to the maximum extent allowable under applicable law.

Section 3.06. *Application of Proceeds*. The proceeds from any sale, lease or other disposition made pursuant to this Article, or the proceeds from the surrender of any insurance policies pursuant to Subsection 3.02(i) hereof, or any Rents collected by Beneficiary from the Property (except Rents received pursuant to Article V hereof), or the reserves required by Section 7.01 hereof, or sums received pursuant to Section 6.04 hereof, or proceeds from insurance which Beneficiary elects to apply to the Obligation pursuant to Section 6.02 hereof, shall be applied by Trustee, or by Beneficiary, as the case may be, as follows: first, to the payment of all expenses of advertising, selling and conveying the Property or part thereof, including reasonable attorneys' fees; second, to accrued interest on the Obligation; third, to principal on the matured portion of the Obligation; fourth, to prepayment of the unmatured portion, if any, of the Obligation applied to installments of principal in inverse order of maturity; and fifth, the balance, if any, remaining after the full and final payment and performance of the Obligation, to the person or persons legally entitled thereto.

Section 3.07. *Abandonment of Sale*. In the event a foreclosure hereunder is commenced by Trustee in accordance with Subsection 3.02(c) hereof, Beneficiary may, at any time before the sale, direct Trustee to abandon the sale, and may then institute suit for the collection of the Note and for the foreclosure of the liens and security interests hereof. If Beneficiary should institute a suit for the collection of the Note and for a foreclosure of the liens and security interests hereof, Beneficiary may, at any time before the entry of a final judgment in said suit, dismiss the same and require Trustee to sell the Property or any part thereof in accordance with the provisions of this Deed of Trust.

Section 3.08. *Payment of Fees*. If the Note or any other part of the Obligation shall be collected or enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to the beneficiary to mature same, or if Beneficiary becomes a party to any suit where this Deed of Trust or the Property or any part thereof is involved, Grantor agrees to pay Beneficiary's attorneys' and collection fees, and such fees shall be and become a part of the Obligation.

Section 3.09. *Indemnification of Trustee*. Except for gross negligence or willful misconduct, Trustee shall not be liable for any act or omission or error of judgment. Trustee may rely on any document believed by Trustee in good faith to be genuine. All money received by Trustee shall, until used or applied as herein provided, be held in trust, but need not be segregated (except to the extent required by law), and Trustee shall not be liable for interest thereon. **GRANTOR SHALL INDEMNIFY TRUSTEE AGAINST ALL LIABILITY AND EXPENSES WHICH TRUSTEE MAY INCUR IN THE PERFORMANCE OF TRUSTEE'S DUTIES HEREUNDER, EXCEPT TO THE EXTENT ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TRUSTEE. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE INDEMNIFICATION OBLIGATIONS OF GRANTOR SET FORTH IN THIS SECTION 3.09 ARE APPLICABLE TO AND COVER LOSSES, DAMAGES, SUITS,**

CLAIMS, JUDGMENTS, PENALTIES, FINES, LIABILITIES, COSTS AND EXPENSES RESULTING FROM, DIRECTLY OR INDIRECTLY THE NEGLIGENT ACTS AND OMISSIONS OF THE TRUSTEE AND ANY STRICT LIABILITY IMPOSED ON THE TRUSTEE, BUT NOT WITH RESPECT TO ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TRUSTEE.

Section 3.10. *Substitute Trustee.* Beneficiary may appoint a substitute Trustee (a) if Trustee herein named or any substitute Trustee shall die, resign, or fail, refuse or be unable, for any reason, to make any such sale or to perform any of the trusts herein declared; or (b) at the option of Beneficiary from time to time as often and whenever Beneficiary prefers and with or without any reason or cause. Each appointment shall be evidenced by a written instrument (the "Substitute Notice") executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, with a copy thereof being provided to the persons required by Utah Code Annotated § 57-1-22 or any successor statute. Each substitute trustee so appointed shall thereupon by such appointment become Trustee and succeed to all the estates, titles, rights, powers, trusts and duties of predecessor Trustee. Any such appointment may be executed by Beneficiary or any authorized representative of Beneficiary, and such appointment shall be presumed conclusively to have been executed with due and proper authority. In compliance with Utah Code Annotated § 57-1-21.5, the Trustee shall not require the Grantor reinstating or paying of the Loan or a Beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee. Without limiting the generality of the foregoing, if Beneficiary is a corporation, bank or association, of any type or character, such appointment may be executed in its behalf by any officer of Beneficiary and shall be presumed conclusively to have been executed with due and proper authority without necessity of proof of any action by the board of directors or any superior officer. Wherever herein the word "Trustee" is used, the same shall mean the duly appointed trustee or substitute trustee hereunder at the time in question. Trustee may resign by written notice to Beneficiary.

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ARTICLE IV

SECURITY AGREEMENT AND FINANCING STATEMENT

This Deed of Trust is also a security agreement between Grantor, as debtor, and Beneficiary, as secured party. Grantor hereby grants to Beneficiary and Beneficiary's successors and assigns, a security interest in those portions of the Property, other than the Land and Improvements, which constitute personal property (excluding inventory and other trade or business movable personal property), whether tangible or intangible, and each and every part thereof, and in all proceeds from the sale, lease or other disposition thereof, and in all sums, proceeds, funds and reserves described or referred to in Sections 6.02, 6.04 and 7.01 hereof. However, the grant of a security interest in proceeds shall not be deemed to authorize any action otherwise prohibited herein. In addition to Beneficiary's rights hereunder or otherwise, Beneficiary shall have all of the rights of a secured party under the Utah Uniform Commercial Code (the "Code"). Furthermore, without limiting Beneficiary's rights hereunder, Grantor authorizes Beneficiary to file financing statements and amendments thereto under the provisions of the Code. The form and substance of any financing statement filed with respect to this Deed of Trust shall be as the Beneficiary, in its sole discretion, may determine and the Beneficiary is authorized to file a financing statement with a collateral description of "all assets" or any other similar description. In addition, Grantor, from time to time, upon each request of Beneficiary, shall promptly (a) execute and deliver to Beneficiary such other documents as required by Beneficiary in order to establish or maintain the validity, perfection or priority of the security interest with respect to the personal property or fixtures; (b) pay to Beneficiary on demand all costs of preparation and filing of financing statements pursuant hereto and all costs of Code searches reasonably required by Beneficiary; and (c) give to Beneficiary a certificate in form satisfactory to Beneficiary listing all trade names of Grantor and under which Grantor operates or intends to operate the Property or any part thereof, and give to Beneficiary advance written notice of any proposed change of any such trade name and of any change of name (or trade name or assumed name), identity or structure of Grantor. A carbon, photographic or other reproduction of this Deed of Trust or of a financing statement executed pursuant hereto is sufficient as a financing statement. This Deed of Trust is, without limitation, intended to be a financing statement filed as a fixture filing with respect to the portions of the Property which are or are to become fixtures, and as mineral, crop and timber filing. The address of Grantor (debtor) is set forth on the first page hereof and the address of Beneficiary (secured party) from whom information concerning the security interest may be obtained, is set forth in Section 1.01 hereof. Grantor is the record owner of the Property.

Without the prior written consent of the Beneficiary, the Grantor shall not create or suffer to be created pursuant to the UCC any other security interest in said items, including replacements and additions thereto. During the existence of any Event of Default, the Beneficiary shall have the remedies of a secured party under the UCC and, at the Beneficiary's option, may also invoke the remedies provided in this Deed of Trust or Loan Agreement as to such items. In exercising any of said remedies, the Beneficiary may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of the Beneficiary's remedies under the UCC or of the remedies provided in this Deed of Trust or the Loan Agreement.

The Grantor represents and warrants to the Beneficiary, as of the date hereof: that the exact legal name of the Grantor is set forth in the first paragraph of this Deed of Trust; that the Grantor is organized or incorporated under the laws of the state of Delaware; and that the Grantor is an organization of the type described in the first paragraph of this Deed of Trust. The Grantor covenants that the Grantor will not cause or permit any change to be made in its name, identity or corporate or partnership structure unless the Grantor shall have first notified the Beneficiary in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by the Beneficiary for the purpose of perfecting or protecting the lien and security interest of the Beneficiary. The Grantor's principal place of business and chief executive office, and the place where the Grantor keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four-months (or, if less, the entire period of the existence of the Grantor) and will continue to be the address of the Grantor set forth in this Deed of Trust (unless the Grantor notifies the Beneficiary in writing at least 30 days prior to the date of such change). The Grantor shall promptly notify the Beneficiary of any change in its organizational identification number. If the Grantor does not now have an organizational identification number and later obtains one, the Grantor promptly shall notify the Beneficiary of such organizational identification number.

This Deed of Trust secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, and is a construction mortgage as that terms is defined in the Code.

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ARTICLE V

ASSIGNMENT OF LEASES AND RENTS

Section 5.01. Assignment of Leases and Rents.

(a) As security for the Loan, Grantor hereby assigns (the "Lease and Rent Assignment") to Beneficiary all of Grantor's right, title and interest in and to all current and future Leases (as defined below) and Rents (as defined below). The terms of the Utah Uniform Assignment of Rents Act (Utah Code Ann. § 57-26-101, et seq.) are incorporated herein by reference, with the parties acknowledging to the extent permitted by applicable law that the Lease and Rent Assignment is a present and absolute assignment and not a collateral assignment of Grantor's interest in the Leases or the Rents.

(b) Without in any way limiting Grantor's obligations under the Loan Documents, at any time upon the occurrence and during the continuance of any Event of Default, Beneficiary may deliver written notice in accordance with Section 8.12 hereof to Grantor and within five (5) days after delivery of such notice, and without further notice and cure period, Grantor will remit to Beneficiary payment of all prepaid Rents for future periods, accrued, unpaid Rents and Rents accruing thereafter to Beneficiary, without any deduction, setoff, or other reduction of any kind. Neither this assignment nor the receipt of Rents by Beneficiary shall effect a *pro tanto* payment of the Obligation and no credit shall be given to Grantor for any Rents until the money is actually received and is applied to the Obligation by Beneficiary. No such credit shall be given for any Rents collected or released after foreclosure or other transfer of the Property to Beneficiary or any other third party.

(c) During the existence of an Event of Default, Beneficiary may apply all such sums or any part thereof it receives, after the payment of all of its expenses (including, without limitation, costs and reasonable attorneys' fees), to one or more of the following: (i) on the Obligation secured by this Deed of Trust in such manner as Beneficiary elects until paid in full, whether due or not, (ii) as otherwise permitted under the terms of this Deed of Trust or any of the other Loan Documents, or (iii) as specifically hereafter agreed to with Grantor in writing with respect to the payment received.

The term "Leases" shall mean all existing and future leases, subleases, lettings, licenses, concessions and other agreements (whether written or oral) including, without limitation, any and all extensions, renewals, modifications and replacements thereof, pursuant to which any Tenant is granted a right to possess, use or occupy all or any portion of the Land and/or the Improvements, together with every guarantee of the performance of the Tenant thereunder. The term "Rents" shall mean all rents, income, receipts, revenues, issues, profits and proceeds (including Cash Proceeds) to be derived from Tenants of the Property or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default under a Lease, all proceeds payable under any policy of insurance covering the loss of Rents resulting from untenability caused by destruction or damage to the Property or otherwise, and all of Grantor's rights to recover monetary amounts from any Tenant in bankruptcy, including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under any Applicable Bankruptcy Law, together with any

sums of money that may now or at any time hereafter become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mineral Leases.

Section 5.02. Warranties Concerning Leases and Rents. Grantor represents and warrants that, as of the date hereof:

- (a) Grantor has good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein;
- (b) all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;
- (c) unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged;
- (d) no Rents have been or will be anticipated, waived, released, discounted, set off or compromised;
- (e) except as indicated in the Leases, Grantor has not received any funds or deposits from any Tenant for which credit has not already been made on account of accrued Rents; and
- (f) all Leases shall specify U.S. addresses for notice to Tenants, and prohibit prepayment of Rent more than one month in advance.

Section 5.03. Grantor's Covenants of Performance. Grantor covenants to:

- (a) perform in all material respects all of its obligations under the Leases;
- (b) give prompt notice to Beneficiary of any notice Grantor receives from any tenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notices of default under residential leases;
- (c) enforce the tenant's 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;
- (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; and
- (f) [intentionally omitted].

Section 5.04. Prior Approval for Actions Affecting Leases. Grantor shall not, without the prior written consent of Beneficiary:

- (a) receive or collect Rents (other than security deposits) more than one month in advance;
- (b) encumber or assign future Rents;
- (c) waive or release any material obligation of any Tenant under the Leases;
- (d) 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;
- (e) renew or extend any of the Leases, except pursuant to terms in existing Leases;
- (f) permit any assignment of the Leases; or
- (g) enter into any Leases after the date hereof.

Section 5.05. Settlement for Termination. Grantor agrees that no settlement for damages for termination of any of the Leases under any Applicable Bankruptcy Law shall be made without the prior written consent of Beneficiary, and any check in payment of such damages will be made payable to both Grantor and Beneficiary, whether or not an Event of Default then exists. Grantor hereby assigns any such payment to Beneficiary to be applied to the Obligation as Beneficiary may elect and agrees to endorse any check for such payment to the order of Beneficiary.

Section 5.06. Beneficiary in Possession. Beneficiary's acceptance of this assignment shall not, prior to entry upon and taking possession of the Property by Beneficiary, be deemed to constitute Beneficiary a "mortgagee in possession," nor obligate Beneficiary to appear in or defend any proceedings relating to any of the Leases or to the Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Grantor by any tenant and not delivered to Beneficiary. Beneficiary shall not be liable for any injury or damage to any person or property in or about the Property.

Section 5.07. Appointment of Attorney. During the existence of any Event of Default, Grantor hereby irrevocably appoints Beneficiary its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate any Leases to this Deed of Trust.

Section 5.08. Indemnification. **GRANTOR HEREBY INDEMNIFIES AND HOLDS BENEFICIARY (WHICH SHALL INCLUDE THE DIRECTORS, OFFICERS,**

PARTNERS, EMPLOYEES, REPRESENTATIVES AND AGENTS OF BENEFICIARY AND ANY PERSONS OR ENTITIES OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH BENEFICIARY) HARMLESS FROM ALL LIABILITY, DAMAGE OR EXPENSE IMPOSED ON OR INCURRED BY BENEFICIARY FROM ANY CLAIMS UNDER THE LEASES, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BY GRANTOR WITH RESPECT TO PAYMENTS OF RENTS MADE DIRECTLY TO BENEFICIARY AFTER AN EVENT OF DEFAULT AND CLAIMS BY ANY TENANT FOR SECURITY DEPOSITS OR FOR RENTAL PAYMENTS MORE THAN ONE (1) MONTH IN ADVANCE AND NOT DELIVERED TO BENEFICIARY PROMPTLY AFTER GRANTOR'S RECEIPT OF BENEFICIARY'S WRITTEN DEMAND THEREFOR DURING THE EXISTENCE OF ANY EVENT OF DEFAULT. ALL AMOUNTS INDEMNIFIED AGAINST HEREUNDER, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, IF PAID BY BENEFICIARY SHALL BEAR INTEREST AT THE MAXIMUM LAWFUL RATE AND SHALL BE PAYABLE BY GRANTOR IN ACCORDANCE WITH SECTION 1.01 HEREOF. THE FOREGOING INDEMNITIES SHALL NOT TERMINATE UPON THE FORECLOSURE, RELEASE OR OTHER TERMINATION OF THIS DEED OF TRUST BUT WILL SURVIVE FORECLOSURE OF THIS DEED OF TRUST OR CONVEYANCE IN LIEU OF FORECLOSURE AND THE REPAYMENT OF THE OBLIGATION AND THE DISCHARGE AND RELEASE OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS.

Section 5.09. *Records.* As and when required under the Loan Agreement, Grantor shall deliver to Beneficiary executed copies of all Leases, Rent rolls in a format acceptable to Beneficiary and copies of all records relating thereto.

Section 5.10. *Merger.* There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Beneficiary.

Section 5.11. *Right to Rely.* Grantor hereby irrevocably authorizes and directs the Tenants to pay Rents, including all accrued, but unpaid Rents to Beneficiary upon receipt of written notice from Beneficiary given during the existence of any Event of Default, without further consent of Grantor. Any such payment to Beneficiary shall constitute payment to Grantor under the Leases. The provisions of this Section are intended solely for the benefit of the Tenants and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a Tenant who has not received such notice. The assignment of Rents set forth in Section 5.01 is not contingent upon any notice or demand by Beneficiary to the Tenants.

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ARTICLE VI

CASUALTY AND CONDEMNATION

Section 6.01. *Casualty, Repair, Proof of Loss.* If any portion of the Property shall be damaged or destroyed by any cause (a "Casualty"), the Grantor shall:

- (a) with respect to a Casualty the cost to repair of which is \$500,000 or more, give immediate written notice to the Beneficiary; and
- (b) promptly commence and diligently pursue or cause others to pursue to completion the restoration, repair and rebuilding of the Property as nearly as possible to its value, condition and character immediately prior to the Casualty ("Restoration"); and
- (c) if the Casualty is covered by insurance, immediately make proof of loss and cause the insurer to pay the insurance proceeds as provided in Section 6.02. If an Event of Default shall be in existence, then the Beneficiary may, but is not obligated to, make proof of loss, and is authorized, but is not obligated, to settle any claim with respect thereto, and to collect the proceeds thereof. With respect to a Casualty the cost to repair of which is \$500,000 or more, the Grantor shall not accept any settlement of an insurance claim, the result of which shall be a payment which is 5% or more less than the full amount of the claim, without the prior written consent of the Beneficiary.

Section 6.02. *Use of Insurance Proceeds.* If the cost of Restoration is less than \$500,000 and provided that there is no continuing Event of Default, the insurance proceeds shall be paid directly to the Grantor for Restoration of the Property. If cost of Restoration is greater than or equal to \$500,000, the proceeds of all insurance policies maintained by the Grantor shall be deposited with the Beneficiary and shall be used by the Grantor for the Restoration of the Property pursuant to Section 6.02. The Beneficiary shall make the net insurance proceeds received by it (after reimbursement of the Beneficiary's out-of-pocket costs of collecting and disbursing the same) available to the Grantor to pay the cost of Restoration of the Property, subject to the following conditions:

- (a) There shall be no Event of Default in existence at the time of any disbursement of the insurance proceeds.
- (b) The Beneficiary shall have determined, in its reasonable discretion, that the cost of Restoration is and will be equal to or less than the amount of insurance proceeds and other funds deposited by the Grantor with the Beneficiary.
- (c) The Beneficiary shall have determined, in its reasonable discretion, that the Restoration can be completed in accordance with plans and specifications approved by the Beneficiary (such approval not to be unreasonably withheld or delayed), in accordance with applicable codes and ordinances and in accordance with the terms, and within the time requirements in order to prevent termination, of any Lease, and in any event not less than six months prior to the Maturity Date.

(d) Funds shall be held by the Beneficiary and shall be disbursed, at the Beneficiary's option, in accordance with the Beneficiary's customary disbursement procedures for construction loans.

(e) The Casualty shall have occurred more than 12 months prior to the Maturity Date.

(f) The Restoration shall be completed in accordance with plans and specifications approved by the Beneficiary, and the Lender shall have received certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the Restoration.

(g) [Intentionally Omitted].

If any of these conditions shall not be satisfied, then the Beneficiary shall have the right to use the insurance proceeds to prepay the Obligation in accordance with the Loan Documents. If any insurance proceeds shall remain after completion of the Restoration of the Property, they shall be disbursed to the Mortgagor, or at the Lender's discretion, used to prepay the Obligations in accordance with the Loan Documents.

Section 6.03. *Condemnation*. If any portion of the Property shall be taken, condemned or acquired pursuant to exercise of the power of eminent domain or threat thereof (a "Condemnation"), the Grantor shall:

(a) give immediate notice thereof to the Beneficiary and send a copy of each document received by the Grantor in connection with the Condemnation to the Beneficiary promptly after receipt;

(b) not enter into any agreement permitting or consenting to the taking of the Property, or any part thereof, or providing for the conveyance thereof in lieu of Condemnation, with anyone authorized to acquire the same in Condemnation unless the Beneficiary shall first have consented thereto in writing; and

(c) diligently pursue any negotiation and prosecute any proceeding in connection with the Condemnation at the Beneficiary's expense. If an Event of Default shall be in existence, the Beneficiary is authorized, but not required, to negotiate and prosecute the claim and appear at any hearing for itself and on behalf of the Grantor and to compromise or settle all compensation for the Condemnation. The Beneficiary shall not be liable to the Grantor for any failure by the Beneficiary to collect or to exercise diligence in collecting any such compensation. The Grantor shall not compromise or settle any claim resulting from the Condemnation if such settlement shall result in payment of 10% or more less than the Beneficiary's reasonable estimate of the damages therefrom. All awards shall be paid to the Beneficiary, subject to Section 6.04.

Section 6.04. *Use of Condemnation Proceeds*. If the cost of Restoration is less than \$500,000 and provided that there is no continuing Event of Default, the Condemnation proceeds shall be paid directly to the Grantor for Restoration of the Property. If cost of Restoration is greater than or equal to \$500,000, the Beneficiary shall make the net Condemnation proceeds received by it (after reimbursement of the Beneficiary's out-of-pocket costs of collecting and disbursing the same)

available to the Grantor to pay the cost of Restoration of the Property, subject to the following conditions:

(a) There shall be no Event of Default in existence at the time of any disbursement of the Condemnation proceeds.

(b) The Beneficiary shall have determined, in its reasonable discretion, that the cost of Restoration is and will be equal to or less than the amount of Condemnation proceeds and other funds deposited by the Grantor with the Beneficiary.

(c) The Beneficiary shall have determined, in its reasonable discretion, that the Restoration can be completed in accordance with plans and specifications approved by the Beneficiary (such approval not to be unreasonably withheld), in accordance with codes and ordinances and in accordance with the terms, and within the time requirements in order to prevent termination, of any Lease, and in any event not less than six months prior to the Maturity Date.

(d) All funds shall be disbursed, at the Beneficiary's option, in accordance with the Beneficiary's customary disbursement procedures for construction loans.

(e) The Condemnation shall have occurred more than 12 months prior to the Maturity Date.

(f) The Restoration shall be completed in accordance with plans and specifications approved by the Beneficiary, and the Lender shall have received certification of the architect or engineer having supervision of the work that such amounts are the amounts paid or payable for the Restoration.

(g) [Intentionally Omitted].

If any of these conditions shall not be satisfied, then the Beneficiary shall have the right to use the Condemnation proceeds to prepay the Obligation in accordance with the Loan Documents. If any Condemnation proceeds shall remain after completion of the Restoration of the Property, they shall be disbursed to the Grantor, or at the Beneficiary's discretion, used to prepay the Obligation in accordance with the Loan Documents.

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ARTICLE VII

SPECIAL PROVISIONS

Section 7.01. *Reserve for Taxes, Assessments and Insurance Premiums.* In addition to any requirements of the Loan Agreement, during the existence of an Event of Default the Beneficiary, by written notice to Grantor, may require Grantor to pay to the Beneficiary each month on the same day payments are due under the Note until the Note is paid in full, a sum equal to one-twelfth of the yearly taxes and assessments levied against the Property and insurance premiums for the insurance policies required to be obtained and maintained by Beneficiary, as estimated initially and from time to time by the Beneficiary, to be applied by the Beneficiary to pay said taxes and assessments and insurance premiums (such amounts being hereafter referred to as the "Funds"). The Beneficiary shall apply the Funds to pay said taxes and assessments and insurance premiums prior to the date that penalty attaches for nonpayment or the premium is payable so long as the amount of Funds held by the Beneficiary is sufficient at that time to make such payments. No earnings or interest shall be payable to the Grantor on the Funds. Such Funds shall not be, nor be deemed to be, trust funds, and the Beneficiary shall have the right to hold the Funds in any manner the Beneficiary elects and may commingle the Funds with other moneys held by the Beneficiary. If at any time the amount of the Funds held by the Beneficiary shall be less than the amount deemed necessary by the Beneficiary to pay taxes and assessments and insurance premiums as they fall due, the Grantor shall promptly pay to the Beneficiary any amount necessary to make up the deficiency upon notice from the Beneficiary to the Grantor requesting payment thereof. The Funds are hereby pledged to the Beneficiary as additional security for the Obligation. Upon the occurrence and during the continuance of any Event of Default, the Beneficiary may apply in any order as the Beneficiary shall determine in its sole discretion, any Funds held by the Beneficiary at the time of application to pay taxes and assessments and insurance premiums which are then or will thereafter become due or as a credit against the Obligation. Upon payment and performance in full of the Obligation and the expiration or termination of any commitment of the Beneficiary to make advances under the Loan Agreement, the Beneficiary shall promptly refund to the Grantor any Funds held by the Beneficiary. Transfer of legal title to the Property shall automatically transfer the interest of Grantor in all sums deposited with Beneficiary under the provisions hereof or otherwise.

Section 7.02. *Restrictions on Transfers.* Except as permitted under the Loan Agreement or in this Deed of Trust, neither Grantor nor any of the members, shareholders, partners or other owners, as applicable, of Grantor shall voluntarily, involuntarily, or by operation of law agree to, cause, suffer or permit (i) any sale, transfer (excluding Approved Leases as permitted by the Loan Agreement), conveyance, or other disposition of any interest of the Grantor, legal or equitable, in the Property; (ii) any sale, transfer, pledge or encumbrance of any member, shareholder, partner or other interests, as applicable, in the Grantor; (iii) any financing which, or any part of which, will be secured by all or any part of the Property or by a lien against or assignment of any full or partial interest in Grantor; or (iv) any mortgage, pledge, encumbrance or lien to be outstanding against the Property or any portion thereof, or any security interest to exist therein, except as created by this Deed of Trust or other security documents held by the Lender or as expressly permitted therein, without, in each instance, the prior written consent of the Beneficiary. If the Grantor breaches the foregoing covenant, the Beneficiary may, at its election and in its sole discretion, declare the entire Obligation and all other amounts owing under this Deed of Trust, the Note and the other security documents to be immediately

due and payable, without notice to the Grantor (which notice the Mortgagor hereby expressly waives), and upon such declaration all such amounts shall be immediately due and payable; and if at such time no prepayment privilege exists under the Note, then with the prepayment premium provided for in the Note at the earliest date on which the Obligation could be prepaid. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

Section 7.03. Environmental Matters; Compliance with Laws. Concurrently herewith the Grantor executed and delivered to the Beneficiary the Indemnification Agreement (as defined in the Loan Agreement) pursuant to which the Grantor have indemnified the Beneficiary for environmental matters concerning the Land and Improvements, as more particularly described therein. The provisions of the Indemnification Agreement are hereby incorporated herein and this Deed of Trust shall secure the obligations of the Grantor thereunder. Notwithstanding the foregoing, the Grantor's obligations under the Indemnification Agreement shall not terminate and shall survive the discharge of the Loan Documents, whether through full payment of the Obligations, foreclosure, deed in lieu of foreclosure or otherwise, for the benefit of the Beneficiary, and its respective successors and assigns, including without limitation, any purchaser at a foreclosure sale.

Section 7.04. Appraisals. Beneficiary is entitled to an appraisal of the Property under the conditions set forth in the Loan Agreement.

Section 7.05. Waiver of Deficiency Statute. To the extent it is determined that the laws of Minnesota are not applicable with respect to any deficiency sought to be obtained by Beneficiary against Grantor or any other obligor of the Obligation, the following provisions shall be applicable.

(a) In the event an interest in any of the Property is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Grantor agrees as follows. To the extent permitted by law, Grantor agrees that Beneficiary shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Grantor, any guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternatively, in the event the waiver provided for in subsection (a) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure: (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities

expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

Section 7.06. Collateral Protection Notice. In case of Grantor's failure to keep the Property properly insured as required herein, Beneficiary, after notice to Grantor, at its option may (but shall not be required to) acquire such insurance as required herein at Grantor's sole expense.

Section 7.07. Contest of Certain Claims. Notwithstanding the provisions of Subsections 2.02(f) hereof, Grantor shall not be in default for failure to pay or discharge any tax, assessment, or mechanic's or materialman's lien asserted against the Property if, and so long as Grantor is contesting any such claims as provided in Section 6.8 of the Loan Agreement.

Section 7.08. Indemnity. The Grantor shall indemnify the Beneficiary and its directors, officers, agents and employees (collectively the "Indemnified Persons") against, and hold the Indemnified Persons harmless from (i) all losses, damages, suits, claims, judgments, penalties, fines, liabilities, reasonable costs and expenses by reason of, or on account of, or in connection with the Property, or any accident, injury, death or damage to any person or property occurring in, on or about the Property or any street, drive, sidewalk, curb or passageway adjacent thereto, (ii) any liability, loss or actual damage that it might incur under any Lease or under or by reason of the assignment hereunder and from any claims and demands whatsoever that may be asserted against it by reason of any alleged obligations or undertakings on the Beneficiary's part and (iii) all costs of defense of any such claim asserted against an Indemnified Person, including reasonable attorneys' fees, provided, however, the Grantor shall have no obligation hereunder to an Indemnified Person with respect to any of the foregoing to the extent resulting from the gross negligence or willful misconduct of such Indemnified Person as determined by a court of competent jurisdiction by final and nonappealable judgment. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE INDEMNIFICATION OBLIGATIONS OF GRANTOR SET FORTH IN THIS SECTION 7.08 ARE APPLICABLE TO AND COVER LOSSES, DAMAGES, SUITS, CLAIMS, JUDGMENTS, PENALTIES, FINES, LIABILITIES, COSTS AND EXPENSES RESULTING FROM, DIRECTLY OR INDIRECTLY, THE NEGLIGENT ACTS AND OMISSIONS OF THE INDEMNIFIED PARTIES AND ANY STRICT LIABILITY IMPOSED ON THE INDEMNIFIED PARTIES.** The indemnity contained in this Section shall survive payment and performance of the Obligations and satisfaction and release of this Deed of Trust and any foreclosure thereof or acquisition of title by deed in lieu of foreclosure. The indemnity contained in this Section shall be in addition to, not in limitation of, any indemnity provided for under any of the other Loan Documents.

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ARTICLE VIII

MISCELLANEOUS

Section 8.01. Covenants Running with the Land; Release. The Obligation contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Beneficiary, and Trustee to be, and shall be construed as, covenants running with the Property until the lien of this Deed of Trust has been fully released by Beneficiary. If the Obligation is paid in full in accordance with the terms of this Deed of Trust and the Loan Documents, and if Grantor shall well and truly perform all of Grantor's covenants contained herein, then this conveyance shall become null and void and be released at Grantor's request and expense and Beneficiary shall have no further obligation to make advances under and pursuant to the provisions hereunder or in the Loan Documents.

Section 8.02. Rights Cumulative. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Property or any portion thereof), and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated for the Obligation or any part thereof, or against any one or more of them, or against the Property, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. All rights and remedies of Beneficiary hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Property.

Section 8.03. Waiver. Any and all covenants in this Deed of Trust may, from time to time, by instrument in writing signed by Beneficiary and delivered to Grantor, be waived to such extent and in such manner as Beneficiary may desire, but no such waiver shall ever affect or impair Beneficiary's rights, remedies, powers, privileges, liens, titles and security interests hereunder except to the extent so specifically stated in such written instrument. No waiver of any Event of Default on the part of Grantor or a breach of any of the provisions of this Deed of Trust or of any Loan Document shall be considered a waiver of any other or subsequent default or breach, and 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, and likewise 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. No notice to or demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. The granting of any consent or approval by Beneficiary shall be limited to the specific instance and shall not waive or exhaust the requirement of consent or approval in any other instance. Except as otherwise specified herein, in any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Beneficiary, and Beneficiary shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner regardless of the reasonableness of the request or of Beneficiary's judgment.

Section 8.04. Payments. Remittances in payment of any part of the Obligation other than in the required amount in funds immediately available at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Beneficiary in funds immediately available at the place where the Note is payable (or such other place as Beneficiary, in Beneficiary's sole discretion, may have established by delivery of written notice thereof to Grantor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Beneficiary of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default.

Section 8.05. Exceptions to Covenants. Grantor shall not be deemed to be permitted to take any action or to fail to take any action with respect to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary, nor shall Beneficiary be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Obligations as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Beneficiary.

Section 8.06. Change of Security. Any part of the Property may be released, regardless of consideration, by Beneficiary from time to time without impairing, subordinating or affecting in any way the lien, security interest and other rights hereof against the remainder. The lien, security interest and other rights granted hereby shall not be affected by any other security taken for the Obligation or any part thereof. The taking of additional collateral, or the amendment, extension, renewal, increase or rearrangement of the Obligation or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any junior lienholder; and this Deed of Trust, as well as any instrument given to secure any amendment, renewal, extension, increase or rearrangement of the Obligation or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Property not expressly released until the Obligation is fully paid and performed and discharged.

Section 8.07. Controlling Agreement. The parties hereto intend to conform strictly to the applicable usury laws. All agreements between Grantor (and any other party liable for any part of the Obligation) and Beneficiary, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no event whatsoever, whether by reason of acceleration of the maturity of the Obligation or otherwise, shall the interest contracted for, charged or received by Beneficiary hereunder or otherwise exceed the maximum amount permissible under applicable law. If from any circumstances whatsoever interest would otherwise be payable to Beneficiary in excess of the maximum lawful amount, the interest payable to Beneficiary shall be reduced automatically to the maximum amount permitted under applicable law. If Beneficiary shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, the amount which would have been excessive interest shall be applied to the reduction of the principal amount owing on the Obligation in inverse order of maturity and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Grantor, or to the maker

of the Note or other evidence of indebtedness if other than Grantor. All interest paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term, including any renewal or extension, of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law.

Section 8.08. *Effect of Transfer on Grantor's Liability.* If the ownership (legal or beneficial) of the Property or any part thereof becomes vested in a person other than Grantor, or in the event of a change in ownership (legal or beneficial) of any Grantor other than an individual, Beneficiary may, without notice to or consent of Grantor or Grantor's successors, deal with such successor or successors in interest with reference to this Deed of Trust and the Obligation either by way of forbearance on the part of Beneficiary, or extension of time of payment of the Obligation, or release of all or any part of the property or any other property securing payment of the Obligation, or otherwise, without in any way modifying or affecting Beneficiary's rights and liens hereunder or the liability of Grantor or any other party liable for payment of the Obligation, in whole or in part.

Section 8.09. *Waiver of Right to Marshal.* Grantor hereby waives all rights of marshaling in the event of any foreclosure of the liens and security interests hereby created.

Section 8.10. *Subrogation.* To the extent that proceeds of the Obligation are used to renew, extend or pay any outstanding debt or to perform any obligation, such proceeds have been advanced by Beneficiary at Grantor's request, and Beneficiary shall be subrogated to all liens, security interests, rights, priorities, powers, titles, equities and interests owned or held by any owner or holder of such outstanding debt or obligation, however remote, irrespective of whether the same are released of record, and all of the same are recognized as valid and subsisting and are renewed, continued and preserved in force to secure the Obligation; provided, however, that if and to the extent Beneficiary desires in each case, the terms and provisions hereof and of the other Loan Documents shall govern the rights and remedies of Beneficiary and shall supersede the terms, provisions, rights, and remedies under any lien, security interest, charge or other encumbrance to which Beneficiary is subrogated hereunder.

Section 8.11. *Reliance by Beneficiary.* Grantor recognizes and acknowledges that in entering into the loan transaction evidenced by the Loan Documents and accepting this Deed of Trust, Beneficiary is expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in Section 2.01 hereof without any obligation to investigate the Property and notwithstanding any investigation of the Property by Beneficiary; that such reliance exists on the part of Beneficiary prior hereto; that such warranties and representations are a material inducement to Beneficiary in making the loan evidenced by the Loan Documents and the acceptance of this Deed of Trust; and that Beneficiary would not be willing to make the loan evidenced by the Loan Documents and accept this Deed of Trust in the absence of any of such warranties and representations.

Section 8.12. *Notice.* Any notice or other communication to any party in connection with this Deed of Trust shall be given pursuant to Section 8.4 of the Loan Agreement unless applicable law requires such notice to be given in a prescribed manner.

Section 8.13. Enforceability. If any provision of this Deed of Trust or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Deed of Trust nor the application of such provision to any other person or circumstances shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law. If the rights and liens created by this Deed of Trust shall be held by a court of competent jurisdiction to be invalid or unenforceable as to any part of the Obligation, the portion of the Obligation which as the result of such invalidity or unenforceability is no longer secured by the liens and security interests herein granted shall be completely paid prior to the payment of the portion, if any, of the Obligation which shall continue to be secured hereunder, and all payments made on the Obligation shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Obligation.

Section 8.14. Binding Effect. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto and shall be covenants running with the Land. The term "Grantor" shall include in their individual capacities and jointly all parties hereinabove named a Grantor. The duties, covenants, conditions, obligations, and warranties of Grantor in this Deed of Trust shall be joint and several obligations of Grantor and, if more than one, of each party named a Grantor hereinabove, and each such party's heirs, personal representatives, successors and assigns. Each party who executes this Deed of Trust and each subsequent owner of the Property or any part thereof (other than Beneficiary), covenants and agrees that it will perform, or cause to be performed, each term, provision, covenant and condition of this Deed of Trust.

Section 8.15. Headings; Construction. The headings which have been used throughout this Deed of Trust have been inserted for convenience of reference only and do not constitute matter to be construed in interpreting this Deed of Trust. Words of any gender used in this Deed of Trust shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. The words "herein," "hereof," "hereunder" and other similar compounds of the words "here" when used in this Deed of Trust shall refer to the entire Deed of Trust and not to any particular provision or section.

Section 8.16. Counterparts. To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

Section 8.17. Controlling Law; Venue.

(a) THIS DEED OF TRUST IS GOVERNED BY, AND SHALL BE CONSTRUED, INTERPRETED AND ENFORCED ACCORDING TO, THE LAWS OF THE STATE OF MINNESOTA, WITHOUT GIVING EFFECT TO ITS CHOICE OF LAW PROVISIONS THAT WOULD RESULT IN APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION, PROVIDED THAT, AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE PORTION OF THE PROPERTY SUBJECT TO SUCH LIENS AND SECURITY INTERESTS IS LOCATED. TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT. WITHOUT LIMITATION OF THE FOREGOING, ANY CLAIM OR ACTION RELATING TO A DEFICIENCY JUDGMENT SHALL BE GOVERNED BY THE LAW OF THE STATE OF MINNESOTA.

(b) SUBJECT TO THE LAST SENTENCE OF THIS SECTION 8.17(b), GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST BENEFICIARY, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR ADVISORS IN ANY WAY RELATING TO THE NOTE OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE U.S. FEDERAL OR MINNESOTA STATE COURTS SITTING IN MINNEAPOLIS, MINNESOTA, AND GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH MINNESOTA STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. GRANTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THE NOTE OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT BENEFICIARY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING AGAINST THE GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION.

(c) GRANTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE

LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE NOTE OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 8.17(b). GRANTOR IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) GRANTOR IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN THE LOAN AGREEMENT. NOTHING IN THE NOTE OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF BENEFICIARY OR GRANTOR TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 8.18. Waiver of Jury Trial. **THE BENEFICIARY AND TRUSTEE, BY THEIR ACCEPTANCE HEREOF, AND GRANTOR HEREBY VOLUNTARILY, KNOWINGLY AND INTENTIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NOTE, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). GRANTOR (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF BENEFICIARY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BENEFICIARY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT BENEFICIARY HAS BEEN INDUCED TO ACCEPT THE NOTE BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS IN THIS SECTION. ANY OF BENEFICIARY, TRUSTEE OR GRANTOR MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION AS WRITTEN EVIDENCE OF THE CONSENTS OF BENEFICIARY, TRUSTEE AND GRANTOR TO THE WAIVER OF THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY.**

Section 8.19. Notice of Final Agreement. **PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND THERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OR PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. EXCEPT AS INCORPORATED IN WRITING INTO THE LOAN DOCUMENTS, THERE ARE NO REPRESENTATIONS, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES, ORAL OR WRITTEN, WITH RESPECT TO THE MATTERS ADDRESSED IN THE LOAN DOCUMENTS.**

It is the intention of Beneficiary and Grantor that this Notice be incorporated into each of the written agreements, instruments and documents constituting the Loan Documents. Grantor

represents and warrants that it has been given this Notice on or before execution of the Written Loan Agreement.

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(Signatures on following page)**

**EXHIBIT A
TO
DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT**

Legal Description of Land

Part of the Southeast quarter of Section 20, Township 1 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

Beginning at a point that lies South 00°03'15" West along the line between the East quarter corner and the Southeast corner of said Section 20, 2049.44 feet and North 89°46'45" West 200.01 feet from the East quarter corner of said Section 20 and running thence South 00°03'11" West 513.11 feet; thence along a non-tangent curve turning to the right with a radius of 30.13 feet, an arc length of 47.15 feet, a delta angle of 89°39'25", a chord bearing of South 45°03'07" West, and a chord length of 42.49 feet; thence South 89°59'45" West 1761.10 feet; thence along a tangent curve turning to the right with a radius of 450.00 feet, an arc length of 355.47 feet, a delta angle of 45°15'34", a chord bearing of North 67°22'28" West, and a chord length of 346.30 feet; thence North 44°44'41" West 176.48 feet; thence North 45°15'01" East 877.23 feet; thence South 78°20'08" East 1646.53 feet to the point of beginning.

Tax Parcel No. 07-20-400-010

**EXHIBIT B
TO
DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT**

Permitted Exceptions

Those liens and encumbrances set forth on Schedule B of the final Lender's Loan Policy dated effective as of the date of recording of this Deed of Trust in connection with File Number 155176-GTB issued by Cottonwood Title, as issuing agent for Old Republic National Title Insurance Company.