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Debbie B. Johnson, Iron County Recorder - Page 1 of 45

09/02/2015 10:46:08 AM By: FIRST AMERICAN TITLE INSURANCE COMPANY - NCS

After recording return to:
Stanley B. Haas
Locke Lord LLP
600 Travis Street, Suite 2800
Houston, Texas 77002

Tax Parcel Numbers: B-1152-0005-0000,
B-1152-0005-0004,
B-1135-0003-0000,
B-1135-0001-0000, and
B-1135-0079-0001.

DOCUMENT: DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING

TRUSTOR: ACS CEDAR SOUTH UT, LLC, a Nevada limited liability company, with an address of 350 Pine Street, Suite 800, Beaumont, Texas 77701

BENEFICIARY: WELLS FARGO BANK, NATIONAL ASSOCIATION, with an address of 1000 Louisiana St., 3rd Floor, Houston, TX 77002, Attention: Tim Gebauer

TRUSTEE: FIRST AMERICAN TITLE INSURANCE COMPANY, with an address of 215 South State Street, Ste 380, Salt Lake City, UT 84111, Attn: National Commercial Services

The maturity date of the Promissory Note secured by this Deed of Trust, exclusive of any option to renew or extend such maturity date, is September 1, 2025

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**DEED OF TRUST AND SECURITY AGREEMENT
(With Assignment of Rents)**

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, FINANCING STATEMENT AND FIXTURE FILING (this "Deed of Trust") is executed as of September 1, 2015, by ACS CEDAR SOUTH UT, LLC, a Nevada limited liability company, with an address of 350 Pine Street, Suite 800, Beaumont, Texas 77701 ("Trustor"), as trustor, to FIRST AMERICAN TITLE INSURANCE COMPANY, with an address of 215 South State Street, Ste 380, Salt Lake City, UT 84111, Attn: National Commercial Services ("Trustee"), as trustee, for the benefit of WELLS FARGO BANK, NATIONAL ASSOCIATION, with an address of 1000 Louisiana St., 3rd Floor, Houston, TX 77002, Attention: Tim Gebauer ("Beneficiary"), as beneficiary.

**ARTICLE 1
IDENTIFICATION OF THE MORTGAGED PROPERTY AND ITS CONVEYANCE TO
THE TRUSTEE**

Section 1.1 Trustor's Conveyance of the Mortgaged Property to the Trustee to Secure the Debt. To secure payment of principal, lawful interest and other elements of the Debt described and defined in Article 2, in consideration of \$10 and other valuable consideration paid before delivery of this Deed of Trust by each of Trustee and Beneficiary to Trustor, who hereby acknowledges its receipt and that it is reasonably equivalent value for this Deed of Trust and all other security and rights given by Trustor, Trustor hereby Grants, Sells, Conveys, Transfers, Assigns, Sets Over, Confirms and Delivers unto the Trustee, and to its successors or substitutes, in trust for the benefit of Beneficiary, the following property (collectively, the "Mortgaged Property"):

(a) **Real Property.** All of the real estate and premises described or referred to on Exhibit A, together with (i) all of Trustor's estate, right, title and interest in and to all easements and rights-of-way for utilities, ingress or egress to or from said property and (ii) all interests of Trustor in and to all streets, rights-of-way, alleys or strips of land adjoining said property (collectively, the "Real Property").

(b) **Buildings and Improvements.** All existing and all future buildings on the Real Property and other improvements to it, all of which Trustor and Beneficiary hereby irrevocably declare to be real estate and part of the Real Property, including all water, sewage and drainage facilities, wells, treatment plants, supply, collection and distribution systems, paving, landscaping and other improvements (collectively, the "Improvements").

(c) **Fixtures, Equipment and Supplies.** All fixtures, equipment and supplies (the "Fixtures and Equipment") now or hereafter attached to, used, intended or acquired for use for, or in connection with, the construction, maintenance, operation or repair of the Real Property or

Improvements, or for the present or future replacement or replenishment of used portions of it, and all related parts, filters and supplies, including, but not limited to, all heating, lighting, cooling, ventilating, air conditioning, environment control, refrigeration, plumbing, incinerating, water-heating, cooking, pollution control, gas, electric, solar, nuclear, computing, monitoring, measuring, controlling, distributing and other equipment and fixtures, and all renewals and replacements of them, all substitutions for them and all additions and accessions to them, all of which Trustor and Beneficiary hereby also irrevocably declare to be real estate and part of the Real Property.

(d) **Leases.** All Leases (as such term is defined in Section 9.1 below).

(e) **Utilities.** All wastewater, fresh water and other utilities capacity and facilities (the "Utilities Capacity") available or allocable to the Real Property and Improvements or dedicated to or reserved for them pursuant to any system, program, contract or other arrangement with any public or private utility, and all related or incidental licenses, rights and interests, whether considered to be real, personal or mixed property, including the right and authority to transfer or relinquish any or all such rights and the right to any credit, refund, reimbursement or rebate for utilities facilities construction or installation or for any reservation fee, standby fee or capital recovery charge promised, provided or paid for by Trustor or any of Trustor's predecessors or Affiliates (defined below), to the full extent now allocated or allocable to the Real Property or Improvements, plus all additional Utilities Capacity, if any, not dedicated or reserved to the Real Property or Improvements but which is now or hereafter owned or controlled by Trustor or by anyone (an "Affiliate", whether a natural person or an entity) who directly or through one or more intermediaries controls, is controlled by or is under common control with Trustor, to the full extent that such additional Utilities Capacity is necessary to allow development, marketing and use of the Real Property or Improvements for their highest and best use.

(f) **After-acquired Property.** All estate, right, title and interest acquired by Trustor in or to the Real Property, Improvements, Fixtures and Equipment, Leases and Utilities Capacity after execution of this Deed of Trust.

(g) **Appurtenances.** Any and all rights and appurtenances (the "Appurtenances") belonging, incident or appertaining to the Real Property, Improvements, Fixtures and Equipment, Leases or Utilities Capacity or any part of them.

(h) **Oil and Gas.** All existing and future minerals, oil, gas and other hydrocarbon substances in, upon, under or through the Real Property.

(i) **Reversions and Remainders.** Any and all rights and estates in reversion or remainder to the Real Property, Improvements, Fixtures and Equipment, Leases, Utilities Capacity or Appurtenances or any part of them.

(j) **Contractual Rights.** All contracts (including contracts for the sale or exchange of all or any portion of the Real Property or the Improvements), franchises, licenses and permits whether executed, granted or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to or connected with the development or sale of the Real Property or the Improvements, whether now or at any time

hereafter existing, and all amendments and supplements thereto and renewals and extensions thereof at any time made, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Trustor's other benefits thereunder.

(k) **Other Estates and Interests.** All other estates, easements, interests, licenses, rights, titles, powers or privileges of every kind and character which Trustor now has, or at any time hereafter acquires, in and to any of the foregoing, including the proceeds from condemnation, or threatened condemnation, and the proceeds of any and all insurance covering any part of the foregoing; and all related parts, accessions and accessories to any of the foregoing and all replacements or substitutions therefor, as well as all other Improvements, Fixtures and Equipment, Leases, Utilities Capacity and Appurtenances now or hereafter placed thereon or accruing thereto.

Section 1.2 **Habendum and Title Warranty.** TO HAVE AND TO HOLD the Mortgaged Property, together with every right, privilege, hereditament and appurtenance belonging or appertaining to it, unto the Trustee, its successors or substitutes and its assigns, forever for the benefit of Beneficiary. Trustor represents that Trustor is the lawful owner of the Mortgaged Property with good right and authority to mortgage and convey it, and that the Mortgaged Property is free and clear of all liens, claims and encumbrances except only those expressly approved by Beneficiary in writing prior to the date hereof. Trustor hereby binds Trustor and Trustor's successors and assigns to forever WARRANT and DEFEND the Mortgaged Property and every part of it unto the Trustee, its successors or substitutes, and its assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim it or any part of it (such warranty to supersede any provision contained in this Deed of Trust limiting the liability of Trustor).

ARTICLE 2 THE DEBT SECURED

Section 2.1 **Conveyance in Trust to Secure Designated Obligations.** This conveyance to the Trustee is in trust to secure all of the following present and future debt and obligations:

(a) **Note.** All indebtedness now or hereafter evidenced and to be evidenced by (i) the promissory note dated concurrently herewith in the face amount of \$4,280,000.00, bearing interest at the rate or rates therein stated, principal and interest payable to the order of Beneficiary on the dates therein stated, with final payment due on September 1, 2025, executed by Trustor and (ii) any and all past, concurrent or future modifications, extensions, renewals, rearrangements, replacements and increases of such note (collectively, the "Note").

(b) **Other Specified Obligations.** All other obligations, if any, described or referred to in any other place in this Deed of Trust.

(c) **Advances and Other Obligations Pursuant to this Deed of Trust's Provisions.** Any and all sums and the interest which accrues on them as provided in this Deed of Trust which Beneficiary may advance or which Trustor may owe Beneficiary pursuant to this Deed of Trust on account of Trustor's failure to keep, observe or perform any of Trustor's covenants under this Deed of Trust.

(d) **Obligations under Credit Documents.** All present and future debts and obligations under or pursuant to (1) any papers ("Credit Documents") now or in the future governing, evidencing, guaranteeing or securing or otherwise relating to payment of all or any part of the debt evidenced by the Note or (2) all supplements, amendments, restatements, renewals, extensions, rearrangements, increases, expansions or replacements of them.

(e) **Related Indebtedness.** All other loans or advances not otherwise specifically described in this Section now or hereafter made for the purpose of paying costs of developing, constructing, improving or operating all or any part of the Mortgaged Property.

(f) **Hedging Indebtedness and Banking Services.** All obligations now or hereafter owing to Beneficiary (or an affiliate of Beneficiary) under a Swap Agreement or under an agreement governing Banking Services. The term "Swap Agreement" as used herein means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Trustor or any other person or entity now or hereafter primarily or secondarily obligated to pay all or any part of the Debt (Trustor and each such other person or entity being herein called an "Obligor") shall be a Swap Agreement. The term "Banking Service" as used herein means each and any of the following bank services provided to any Obligor by Lender or any of its affiliates: (a) commercial credit cards, (b) stored value cards and (c) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

Section 2.2 **Debt Defined.** The term "Debt" means and includes every note and all other debt and obligations described or referred to in Section 2.1 (including obligations owing to Beneficiary (or an affiliate of Beneficiary) under a Swap Agreement or under an agreement governing Banking Services). The Debt includes interest and other obligations accruing or arising after (a) commencement of any case under any bankruptcy or similar laws by or against any Obligor or (b) the obligations of any Obligor shall cease to exist by operation of law or for any other reason. The Debt also includes all reasonable attorneys' fees and any other expenses incurred by Beneficiary in enforcing any of the Credit Documents. All liens, assignments and security interests created, represented or continued by this Deed of Trust, both present and future, shall be first, prior and superior to any lien, assignment, security interest, charge, reservation of title or other interest heretofore, concurrently or subsequently suffered or granted by Trustor or Trustor's successors or assigns, except only statutory super priority liens for nondelinquent taxes and those other liens (if any) expressly identified and stated in this Deed of Trust to be senior.

ARTICLE 3 SECURITY AGREEMENT

Section 3.1 **Grant of Security Interest.** Without limiting any of the provisions of this Deed of Trust, Trustor, as Debtor, and referred to in this Article as "Debtor" (whether one or more) hereby grants to Beneficiary, as Secured Party, and referred to in this Article as "Secured Party" (whether

one or more), a security interest in all of Debtor's remedies, powers, privileges, rights, titles and interests (including all of Debtor's power, if any, to pass greater title than it has itself) of every kind and character now owned or hereafter acquired, created or arising in and to (i) the Mortgaged Property (including both that now and that hereafter exist) to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code of the state or states where the Mortgaged Property is situated (the "UCC"), (ii) all equipment, accounts, general intangibles, fixtures, inventory, chattel paper, notes, documents and other personal property used, intended or acquired for use, on--or in connection with the use or operation of--the Mortgaged Property, or otherwise related to the Mortgaged Property, and all products and proceeds of it, including all security deposits under Leases now or at any time hereafter held by or for Debtor's benefit, all monetary deposits which Debtor has been required to give to any public or private utility with respect to utility services furnished to the Mortgaged Property, all funds, accounts, instruments, accounts receivable, documents, trademarks, trade names and symbols used in connection therewith, and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property, and all guaranties and warranties obtained with respect to all improvements, equipment, furniture, furnishings, personal property and components of any thereof located on or installed at the Mortgaged Property and (iii) the following described property:

(a) **Contracts.** All contracts now or hereafter entered into by and between Debtor and any other party, as well as all right, title and interest of Debtor under any subcontracts, providing for the construction (original, restorative or otherwise) of any improvements to or on any of the Mortgaged Property or the furnishing of any materials, supplies, equipment or labor in connection with any such construction.

(b) **Plans.** All of the plans, specifications and drawings (including plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and architectural and engineering studies and analyses) heretofore or hereafter prepared by any architect, engineer or other design professional, in respect of any of the Mortgaged Property.

(c) **Design, etc. Agreements.** All agreements now or hereafter entered into with any person or entity in respect of architectural, engineering, design, management, development or consulting services rendered or to be rendered in respect of planning, design, inspection or supervision of the construction, management or development of any of the Mortgaged Property.

(d) **Lender or Investor Commitments.** Any commitment issued by any lender or investor other than Beneficiary to finance or invest in any of the Mortgaged Property.

(e) **Bonds.** Any completion bond, performance bond and labor and material payment bond and any other bond relating to the Mortgaged Property or to any contract providing for construction of improvements to any of the Mortgaged Property.

together with all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles now owned by Debtor or existing or hereafter acquired, created or arising (whether or not related to any of the foregoing Property). All the property described or referred

to in this Section is collectively referred to as the “Collateral”. The Mortgaged Property and the Collateral are collectively referred to as the “Property”. In the event of any express inconsistency between the provisions of this Section and Article 9 regarding any Lease, the provisions of Article 9, to the extent valid, enforceable and in effect, shall govern and control.

Section 3.2 Debtor’s Covenants Concerning Personalty Subject to the UCC. Debtor covenants and agrees with Secured Party that in addition to and cumulative of any other remedies granted in this Deed of Trust to Secured Party or the Trustee, upon or at any time after the occurrence of an Event of Default (defined in Article 6):

(a) Secured Party is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Debtor hereby WAIVING all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell or rent the same for the account of Debtor and to deduct from such sale proceeds or such rents all costs, expenses and liabilities of every character incurred by Secured Party in collecting such sale proceeds or such rents and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds or such rents on the Debt in such manner as Secured Party may elect. Before any sale, Secured Party may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to such extent as Secured Party may deem advisable and any sums expended therefor by Secured Party shall be reimbursed by Debtor. Secured Party may take possession of Debtor’s premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Debtor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Debtor. All costs, expenses, and liabilities incurred by Secured Party in collecting such sales proceeds or such rents, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds or such rents as hereinabove provided, shall constitute a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Past Due Rate (as defined in Article 7 below), all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Secured Party pursuant to this Section, Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Secured Party with respect to the Collateral unless such loss is caused by the willful misconduct and/or bad faith of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.

(b) Secured Party may, without notice except as hereinafter provided, sell the Collateral at public or private sale (with or without appraisal or having the Collateral at the place of sale) for cash, upon credit, or for future delivery, and at such price or prices as Secured Party may deem best, and Secured Party may be the purchaser of any and all of the Collateral so sold and may apply upon the purchase price therefor any of the Debt and thereafter hold the same

absolutely free from any right or claim of whatsoever kind. Secured Party is authorized at any such sale, if Secured Party deems it advisable or is required by applicable law so to do, to disclaim and to refuse to give any warranty, and to impose such other limitations or conditions in connection with any such sale as Secured Party deems necessary or advisable in order to comply with applicable law. Upon any such sale Secured Party shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law or statute now existing or hereafter adopted. To the extent notice is required by applicable law, Secured Party shall give Debtor written notice at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Secured Party's intention to make any such public or private sale. Such notice (if any is required by applicable law) shall be personally delivered or mailed, postage prepaid, at least ten (10) calendar days before the date fixed for a public sale, or at least ten (10) calendar days before the date after which the private sale or other disposition is to be made, unless the Collateral is of a type customarily sold on a recognized market, is perishable or threatens to decline speedily in value. Such notice (if any is required by applicable law), in case of public sale, shall state the time and place fixed for such sale or, in case of private sale or other disposition other than a public sale, the time after which the private sale or other such disposition is to be made. Any public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Secured Party may fix in the notice of such sale. At any sale the Collateral may be sold in one lot as an entirety as Secured Party may determine. Secured Party shall not be obligated to make any sale pursuant to any such notice. Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall incur no liability in case of the failure of such purchaser to take up and pay for the Collateral so sold, and in case of any such failure, such Collateral may again be sold upon like notice. Each and every method of disposition described in this Section shall constitute disposition in a commercially reasonable manner. Each Obligor, to the extent applicable, shall remain liable for any deficiency.

(c) Secured Party shall have all the rights of a secured party after default under the Uniform Commercial Code of each applicable jurisdiction and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) Secured Party may require Debtor to assemble the Collateral and make it available at a place Secured Party designates which is mutually convenient to allow Secured Party to take possession or dispose of the Collateral; and

(ii) it shall not be necessary that Secured Party take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(iii) before application of proceeds of disposition of the Collateral to the Debt, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale

or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Secured Party, each Obligor, to the extent applicable, to remain liable for any deficiency; and

(iv) the sale by Secured Party of less than the whole of the Collateral shall not exhaust the rights of Secured Party hereunder, and Secured Party is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the indebtedness secured hereby, this Deed of Trust and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and

(v) in the event any sale hereunder is not completed or is defective in the opinion of Secured Party, such sale shall not exhaust the rights of Secured Party hereunder and Secured Party shall have the right to cause a subsequent sale or sales to be made hereunder; and

(vi) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of any indebtedness or as to the occurrence of any default, or as to Secured Party having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and the Collateral to be sold having been duly given, as to any other act or thing having been duly done by Secured Party, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(vii) Secured Party may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Secured Party, including the sending of notices and the conduct of sale, but in the name and on behalf of Secured Party; and

(viii) demand of performance, advertisement and presence of property at sale are hereby WAIVED and Secured Party is hereby authorized to sell hereunder any evidence of debt it may hold as security for the secured indebtedness. All demands and presentments of any kind or nature are expressly WAIVED by Debtor. Debtor WAIVES the right to require Secured Party to pursue any other remedy for the benefit of Debtor and agrees that Secured Party may proceed against any Obligor for the amount of the Debt owed to Secured Party without taking any action against any other Obligor or any other person or entity.

Section 3.3 UCC Rights are not Exclusive. Should Secured Party elect to exercise its rights under the UCC as to part of the personal property or fixtures described in this Deed of Trust, such election shall not preclude Secured Party or the Trustee from exercising any or all of the rights and remedies granted by the other Articles of this Deed of Trust as to the remaining personal property or fixtures.

Section 3.4 Deed of Trust is Also Financing Statement. Secured Party may, at its election, at any time after delivery of this Deed of Trust, file an original of this Deed of Trust as a financing statement. Secured Party's signature may be placed between the last sentence of this Deed of Trust and Debtor's acknowledgment or may follow Debtor's acknowledgment. Secured Party's signature need not be acknowledged and is not necessary to the effectiveness of this Deed of Trust as a deed

of trust, mortgage, assignment, pledge, security agreement or (unless otherwise required by applicable law) as a financing statement.

Section 3.5 No other Financing Statements on the Collateral. So long as any amount remains unpaid on the Debt, Debtor will not execute and there will not be filed in any public office any financing statements affecting the Collateral other than financing statements in favor of Secured Party under this Deed of Trust, unless prior written specific consent and approval of Secured Party shall have been first obtained.

Section 3.6 Secured Party May File Financing and Continuation Statements. Secured Party is authorized to file this Deed of Trust, a financing statement or statements and one or more continuation statements in any jurisdiction where Secured Party deems it necessary, and at Secured Party's request, Debtor will pay the costs of filing or recording them, in all public offices at any time and from time to time whenever filing or recording of this Deed of Trust, any financing statement or any continuation statement is deemed by Secured Party or its counsel to be necessary or desirable.

Section 3.7 Fixtures. Certain of the Collateral is or will become "fixtures" (as that term is defined in the UCC) on the Real Property, and when this Deed of Trust is filed for record in the real estate records of the county where such fixtures are situated, it shall also automatically operate as a financing statement upon such of the Collateral which is or may become fixtures.

Section 3.8 Assignment of Non-UCC Personal Property. To the extent that any of the Collateral is not subject to the UCC of the state or states where it is situated, Debtor hereby assigns to Secured Party all of Debtor's right, title and interest in the Collateral to secure the Debt. Reconveyance of this Deed of Trust shall automatically terminate this assignment.

Section 3.9 Debtor's Warranties Concerning Collateral. Debtor warrants and represents to Secured Party that Debtor is the legal and equitable owner and holder of the Collateral free of any adverse claim and free of any security interest or encumbrance except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Deed of Trust (such warranty to supersede any provision contained in this Deed of Trust limiting the liability of Trustor). Debtor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its proceeds or any interest in either. Debtor also warrants and represents that there are no financing statements directly or indirectly affecting the Collateral or any part of it now on file in any public office except only those statements (if any) true and correct copies of which Debtor has actually delivered to Secured Party.

Section 3.10 Certain Powers of Secured Party. Debtor hereby authorizes and directs each account debtor and each other person or entity obligated to make payment in respect of any of the Collateral (each a "Collateral Obligor") to pay over to Secured Party, its officers, agents or assigns, upon demand by Secured Party, all or any part of the Collateral without making any inquiries as to the status or balance of the secured indebtedness and without any notice to or further consent of Debtor. Debtor hereby agrees to indemnify each Collateral Obligor and hold each Collateral Obligor harmless from all expenses and losses which it may incur or suffer as a result of any payment it makes to Secured Party pursuant to this paragraph. To facilitate the rights of Secured Party hereunder, Debtor hereby authorizes Secured Party, its officers, employees, agents or assigns:

(a) to notify Collateral Obligors of Secured Party's security interest in the Collateral and to collect all or any part of the Collateral without further notice to or further consent by Debtor, and Debtor hereby constitutes and appoints Secured Party the true and lawful attorney of Debtor (such agency being coupled with an interest), irrevocably, with power of substitution, in the name of Debtor or in its own name or otherwise, to take any of the actions described in the following clauses (b), (c), (d), (e), (f) and (g);

(b) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Collateral and to settle and/or adjust all disputes and/or claims directly with any Collateral Obligor and to compromise, extend the time for payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, on such terms and conditions as Secured Party may determine (without thereby incurring responsibility to or discharging or otherwise affecting the liability of Debtor to Secured Party under this Deed of Trust or otherwise);

(c) to direct delivery of, receive, open and dispose of all mail addressed to Debtor and to execute, sign, endorse, transfer and deliver (in the name of Debtor or in its own name or otherwise) any and all receipts or other orders for the payment of money drawn on the Collateral and all notes, acceptances, commercial paper, drafts, checks, money orders and other instruments given in payment or in part payment thereof and all invoices, freight and express bills and bills of lading, storage receipts, warehouse receipts and other instruments and documents in respect of any of the Collateral and any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Deed of Trust;

(d) in its discretion to file any claim or take any other action or proceeding which Secured Party may deem necessary or appropriate to protect and preserve the rights, titles and interests of Secured Party hereunder;

(e) to file financing statements, and to sign the name of Debtor to drafts against Collateral Obligors, assignments or verifications of any of the Collateral and notices to Collateral Obligors;

(f) to station one or more representatives of Secured Party on Debtor's premises for the purpose of exercising any rights, benefits or privileges available to Secured Party hereunder or under any of the Credit Documents or at law or in equity, including receiving collections and taking possession of books and records relating to the Collateral; and

(g) to cause title to any or all of the Collateral to be transferred into the name of Secured Party or any nominee or nominees of Secured Party.

The powers conferred on Secured Party pursuant to this Section are conferred solely to protect Secured Party's interest in the Collateral and shall not impose any duty or obligation on Secured Party to perform any of the powers herein conferred. No exercise of any of the rights provided for in this Section shall constitute a retention of collateral in full or partial satisfaction of the indebtedness as provided for in the Uniform Commercial Code of each applicable jurisdiction.

Section 3.11 Standard of Care. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action

for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Secured Party to take any action not so requested by Debtor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

Section 3.12 **Change Terms, Release Collateral.** Secured Party may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Debtor or discharging or otherwise affecting any liability of Debtor. Secured Party shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

ARTICLE 4 TRUSTOR'S COVENANTS

Section 4.1 **Covenants for the Benefit of Beneficiary.** To better secure the Debt, Trustor covenants and agrees with the Trustee and its substitutes and successors in the Trust, for the use and benefit of Beneficiary and with the intent that the Trustee, Beneficiary or both may enforce these covenants, that:

(a) **Liens, etc. and Remedies Cumulative.** No lien, assignment, security interest, guaranty, right or remedy in favor of Beneficiary granted in, secured by or ancillary to this Deed of Trust shall be considered as exclusive, but each shall be cumulative of all others which Beneficiary or the Trustee may now or hereafter have.

(b) **Trustor Waives Marshalling of Assets and Sale in Inverse Order of Alienation Rights.** Trustor hereby irrevocably WAIVES all rights of marshalling of assets or sale in inverse order of alienation in the event of foreclosure of this or any other security.

(c) **Trustor Will Correct Title Defects.** If at any future time any defect should be found to exist in the title to any of the Property, Trustor agrees to promptly commence and thereafter diligently proceed to cure the defect and defend the title. If any lien or encumbrance junior, equal or superior in rank or priority to the lien of this Deed of Trust should be discovered or arise at any time in the future then, unless Beneficiary is the only holder of it, or Beneficiary has given specific prior written consent to it, Trustor agrees to promptly discharge and remove it from the Mortgaged Property. Trustor will notify Beneficiary in writing within five (5) days of the time that Trustor becomes aware of the filing of any mortgage, lien, security interest, financing statement or other security device whatsoever against the Property.

(d) **Insurance Requirements.** At all times before the final termination of this Deed of Trust, Trustor agrees to provide, maintain and keep in force title, casualty, liability and other insurance for the Property as required by Beneficiary and in any event Trustor will maintain the following specifically described insurance coverages:

(i) **Casualty Coverage.** A special form policy of permanent property insurance insuring the Property against all risks of any kind or character except those permitted by Beneficiary in writing to be excluded from coverage thereunder.

(ii) **Boiler Coverage.** A boiler and machinery insurance policy covering loss or damage to all portions of the Property comprised of air-conditioning and heating systems, other pressure vessels, machinery, boilers or high pressure piping.

(iii) **Loss of Earnings Coverage.** To the extent requested by Beneficiary at any time that an Event of Default has occurred which is continuing, A special form policy of insurance covering loss of earnings and/or rents from the Property in the event that the Property is not available for use or occupancy due to casualty, damage or destruction required to be covered by the policies of insurance described in (1) and (2) above.

(iv) **Liability Insurance.** Commercial general liability, auto liability, umbrella or excess liability and worker's compensation insurance against claims for bodily injury, death or property damage occurring on, in or about the Mortgaged Property in an amount and containing terms acceptable to Beneficiary.

(v) **Coverage During Construction.** If all or any portion of the Property consists of improvements under construction: (i) a builder's all-risk form insurance policy on a completed value, non-reporting form, insuring the Property against all risks of any kind or character except those permitted by Beneficiary in writing to be excluded from coverage thereunder, and an all-risk policy of insurance covering loss of future earnings and/or rents from the Property in the event the Property is not ready or available for use or occupancy due to casualty, damage or destruction required to be covered by such builder's all-risk insurance policy, (ii) policies of insurance to be carried by each contractor performing work in connection with the Property covering worker's compensation, employers' liability, commercial general liability and comprehensive automobile liability, including a broad form umbrella/excess liability insurance policy and (iii) policies of professional liability insurance to be carried by each design professional performing work in connection with the Property covering each such party against claims for actual or alleged errors, omissions or negligent acts in the performance of their respective services rendered in respect of the Property.

(vi) **Other Insurance Required.** Such other insurance against other insurable hazards, risks or casualties which at the time are commonly insured against in the case of owners and premises similarly situated, due regard being given to the financial condition of Trustor, the height and type of the Property, its construction, location, use and occupancy.

(e) **Insurance Companies, Policies, Endorsements and Premium Payments.** Trustor agrees that all required insurance will be written on forms acceptable to Beneficiary and by companies having a Best's Insurance Guide Rating of not less than A or A+ and which are otherwise acceptable to Beneficiary, and that such insurance (other than third party liability insurance) shall be written or endorsed so that all losses are payable to Beneficiary. The original policies evidencing such insurance shall be delivered by Trustor to Beneficiary and held by Beneficiary, unless Beneficiary expressly consents to accept insurance certificates instead. Each such policy shall expressly prohibit cancellation or modification of insurance without thirty (30) days' written notice to Beneficiary. Trustor agrees to furnish due proof of payment of the premiums for all such insurance to Beneficiary promptly after each such payment is made and in any case at least fifteen (15) days before payment becomes delinquent.

(f) **Beneficiary's Rights to Collect Insurance Proceeds.** Trustor hereby assigns to Beneficiary the exclusive right to collect any and all monies that may become payable under any insurance policies covering any part of the Property, or any risk to or about the Property.

(g) **Effects of Foreclosure on Insurance Policies and Post-foreclosure Event Claims.** Foreclosure of this Deed of Trust shall automatically constitute foreclosure upon all policies of insurance insuring any part of or risk to the Property and all claims thereunder arising from post-foreclosure events. The successful bidder or bidders for the Property at foreclosure, as their respective interests may appear, shall automatically accede to all of Trustor's rights in, under and to such policies and all post-foreclosure event claims, and such bidder(s) shall be named as insured(s) on request, whether or not the trustee's deed or bill of sale to any such successful bidder mentions insurance.

(h) **Application of Insurance Proceeds Collected Before Foreclosure.** Unless an Event of Default has occurred and so long as Beneficiary is satisfied that the applicable proceeds (together with other funds deposited with Beneficiary by or on behalf of Trustor for the purpose of repair and restoration of the applicable damage or destruction) are sufficient to pay all costs of repair and restoration of the applicable damage or destruction, Beneficiary will hold all proceeds of insurance which was paid for by Trustor or by anyone other than Beneficiary or another holder of any of the Debt and which proceeds are actually received by Beneficiary before foreclosure (and such other funds deposited with Beneficiary) and will disburse the same as such repairs or restoration are made, upon such terms and conditions as Beneficiary may elect, and upon presentation of satisfactory evidence to Beneficiary that payment is being requested for permissible repair and restoration and without the imposition of any lien on the Property. Any insurance proceeds remaining if Trustor and Beneficiary do not agree to the terms of the advance of the funds for repair and restoration within thirty (30) days after the event producing such funds, or if an Event of Default occurs, or after completion of the repair and restoration, shall be applied in payment of the Debt or, at the option of Beneficiary, shall be paid to Trustor or to such other person as is legally entitled to them.

(i) **Application of Insurance Proceeds Collected After Foreclosure.** Unless Beneficiary or Beneficiary's representative reserves at the foreclosure sale the right to collect any uncollected insurance proceeds recoverable for events occurring before foreclosure (in which event the successful bidder at the sale, if not Beneficiary, shall have no interest in such proceeds and Beneficiary shall apply them, if and when collected, to the Debt in such order and manner as Beneficiary shall then elect and remit any remaining balance to Trustor or to such other person or entity as is legally entitled to them), all proceeds of all such insurance which are not so reserved by Beneficiary at the foreclosure sale and are not actually received by Beneficiary until after foreclosure shall be the property of the successful bidder or bidders at foreclosure, as their interests may appear, and Trustor shall have no interest in them and shall receive no credit for them.

(j) **Beneficiary Not Obligated to Require, Provide or Evaluate Insurance.** Beneficiary shall have no duty to Trustor or anyone else to either require or provide any insurance or to determine the adequacy or disclose any inadequacy of any insurance.

(k) **Beneficiary May Elect to Insure Only its Own Interests.** If Beneficiary elects at any time or for any reason to purchase insurance relating to the Property, it shall have no

obligation to cause Trustor or anyone else to be named as an insured, to cause Trustor's or anyone else's interests to be insured or protected or to inform Trustor or anyone else that his or its interests are uninsured or underinsured.

(l) **Trustor Will Correct Defects, Provide Further Assurances and Papers.** Upon Beneficiary's request, Trustor will promptly correct any defect which hereafter may be discovered in the text, execution or acknowledgment of the Note, this Deed of Trust or any Credit Document or in the description of any of the Property, and will deliver such further assurances and execute such additional papers as in the opinion of Beneficiary or its legal counsel shall be necessary, proper or appropriate (1) to better convey and assign to the Trustee and Beneficiary all the Property intended or promised to be conveyed or assigned or (2) to properly evidence or give notice of the Debt or its intended or promised security.

(m) **Trustor Will Pay Taxes and Impositions and Furnish Receipts.** At Trustor's own cost and expense, Trustor agrees to pay and discharge all taxes, assessments, maintenance charges, permit fees, impact fees, development fees, capital recovery charges, utility reservation and standby fees and all other similar and dissimilar impositions of every kind and character ("Impositions") charged, levied, assessed or imposed against any interest in any of the Property, as they become payable and before they become delinquent. Trustor agrees to furnish due proof of such payment to Beneficiary promptly after payment and before delinquency and before any fine, penalty or interest attaches.

(n) **Trustor to Pay Monthly Tax and Insurance Deposits on Request.** If and after Beneficiary requests it, Trustor agrees to pay the monthly tax and insurance premium deposits required by Article 8 and to provide Beneficiary any additional sums needed to pay the taxes and insurance premiums for the Property when due.

(o) **Trustor Will Maintain Property and Won't Remove Improvements.** Trustor agrees to keep, preserve and maintain all elements of the Property in a good state of repair and condition and to keep all equipment and stores of supplies needed for its proper and full operation on the Property, well stocked and in good operating condition. Trustor will not tear down, damage or attempt to remove, demolish or materially alter or enlarge any elements of the Property, or construct any new Improvements, without Beneficiary's prior written consent. Trustor shall have the right, without such consent, to remove and dispose of, free from the lien, assignments and security interests of this Deed of Trust, such Fixtures and Equipment as from time to time become worn out or obsolete, provided that either (a) simultaneously with or before such removal any such equipment shall be replaced with other equipment of a value at least equal to that of the replaced equipment and free from any title retention or security agreement or other encumbrance and from any reservation of title, and by such removal and replacement Trustor shall be deemed to have subjected such equipment to the lien, assignments and security interests of this Deed of Trust or (b) any net cash proceeds received from such disposition shall be paid over promptly to Beneficiary to be applied to the Debt in the order determined by Beneficiary in its sole discretion. Trustor shall not grant, join in or consent to any lien, security interest, easement, license, use or other charge or interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Beneficiary.

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

(q) **Beneficiary's Inspection and Discussion Rights.** Trustor agrees to permit Beneficiary and its agents, representatives and employees at all reasonable times to go upon, examine, inspect and remain on the Mortgaged Property, to assist and cooperate, and require Trustor's employees, agents and contractors to cooperate, with Beneficiary and to furnish to Beneficiary on request all pertinent information concerning the physical and economic condition, development and operation of the Mortgaged Property. Beneficiary may discuss the Mortgaged Property directly with any of Trustor's officers and managers.

(r) **Beneficiary May Grant Releases without Impairing Other Collateral or Rights.** At all times, Beneficiary shall have the right to release or reconvey any part of the Property or any other security from this Deed of Trust or any other security instrument or device without releasing any other part of the Property or any other security, without affecting Beneficiary's lien, assignment or security interest as to any property or rights not released or reconveyed and without affecting or impairing the liability of any maker, guarantor or surety on the Note or other obligation.

(s) **Trustor Will Notify Beneficiary of Legal Proceedings and Defend Lien; Beneficiary May Act if Trustor Doesn't.** Trustor will notify Beneficiary in writing promptly of the commencement of any legal proceedings affecting any part of the Property and will engage and pay legal counsel to answer and to defend and preserve Beneficiary's liens, rights and interests and their rank and priority. If Trustor fails or refuses to promptly begin or to diligently continue any such acts, then Beneficiary may elect to do so and may take such action in behalf of Trustor, in Trustor's name and at Trustor's expense.

(t) **If Trustor is not a Natural Person.** If Trustor has represented to Beneficiary that Trustor is not a natural person, then it and its directors, partners, venturers, trustee(s) or principals agree to maintain its existence as such and to obtain and maintain all franchises and permits necessary for it continuously to be in good standing in the State of Utah and in the state of its organization (if not Utah) with full power and authority to conduct its regular business and to own and operate the Mortgaged Property until final termination of this Deed of Trust.

(u) **Vendor's Lien and Purchase Money Security Interest.** Trustor agrees that to the full extent that any of the proceeds of the Note have been or are paid or applied towards the purchase of any real or personal property, it shall be conclusively presumed to have been done at Trustor's special instance and request, and Trustor hereby acknowledges and recognizes the existence of a vendor's lien and a purchase money security interest in favor of Beneficiary against such property, as security for the Note in addition to and cumulative of the lien, assignments and security interest of this Deed of Trust, in the same manner in the case of real property as if an express vendor's lien and the superior title had been reserved in the deed from the seller of such property and expressly therein assigned by the seller to Beneficiary. Foreclosure under this Deed of Trust shall also constitute foreclosure of said vendor's lien or purchase money security interest.

(v) **Legal Compliance, Governmental Notices.** Trustor will operate the Property and conduct its business in full compliance with all requirements of governmental and quasi-governmental authorities having jurisdiction over Trustor or the Property and will comply with and punctually perform all of the covenants, agreements and obligations imposed upon it or the Property. Trustor will furnish to Beneficiary copies of notices and reports received or sent by Trustor to or from each governmental and quasi-governmental authority within three (3) days of the receipt or giving thereof.

(w) **Perform Other Obligations.** Trustor will pay punctually and discharge when due, or renew or extend, any debt incurred by it and will discharge, perform and observe the covenants, provisions and conditions to be performed, discharged and observed on the part of Trustor in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any mortgage, pledge or lien existing at any time upon any of the property or assets of Trustor; provided, however, that nothing contained in this subsection shall require Trustor to pay, discharge, renew or extend any such indebtedness or to discharge, perform or observe any such covenants, provisions and conditions so long as Trustor shall be diligently and in good faith contesting any claims which may be asserted against it with respect to any such indebtedness or any such covenants, provisions and conditions and shall set aside on its books reserves with respect thereto deemed adequate by Beneficiary.

(x) **Notice of Material Change.** Immediately upon acquiring knowledge of any material adverse change in the assets, liabilities, financial condition, business, operations, affairs or circumstances of any Obligor, Trustor will notify Beneficiary in writing thereof, setting forth the nature of such change in reasonable detail. Trustor will take, and will cause to be taken, all such steps as are necessary or appropriate to remedy promptly any such change.

(y) **Notice of Default to Beneficiary.** Immediately upon acquiring knowledge thereof, Trustor will notify Beneficiary by telephone (and confirm such notice in writing within two (2) days) of the existence of any Event of Default, specifying the nature and duration thereof and what action Trustor has taken, is taking and proposes to take with respect thereto. In no event shall silence by Beneficiary be deemed a waiver of a default or of an Event of Default. Trustor will take all such steps as are necessary or appropriate to remedy promptly any such default or Event of Default.

(z) **Notice of Condemnation and Other Proceedings.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Trustor will notify Beneficiary in writing of the pendency of such proceedings. Beneficiary may participate in any such proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments requested by it to permit such participation. Trustor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Beneficiary, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings.

(aa) **Notice of Name or Address Change.** Trustor will not change Trustor's name or the location of its chief executive office (or residence if a natural person) without first notifying Beneficiary in writing of such change at least thirty (30) days before its effective date.

(bb) **Additional Information.** Trustor shall furnish to Beneficiary from time to time such information relating to the Property or Trustor's financial condition and affairs as Beneficiary may from time to time request or as may be required from time to time by any Credit Document.

(cc) **Proper Books.** Trustor shall at all times maintain proper books of record and account in accordance with sound accounting practice in which true, full and correct entries will be made of all its dealings and business affairs, and will set aside on its books adequate reserves for depletion, depreciation, obsolescence and/or amortization of its property, and all other reserves which, in accordance with sound accounting practice, should be set aside, and will write down, to the estimated salvage value thereof, all property not useful in its business. Beneficiary shall be entitled to have such books examined and audited at any time by Beneficiary's agents.

(dd) **Manager.** Trustor will, or will cause its managers to, do and perform any and all acts and things relating to the management, upkeep and operation of the Property as are customarily performed by managing agents and owners of properties comparable to the Property, similarly situated, and shall otherwise operate the Property, or cause the Property to be operated, in a first-class efficient manner and in accordance with all legal requirements and the terms and conditions of this Deed of Trust and the other Credit Documents. No management agreement shall be executed with any manager unless the manager and management agreement are previously approved in writing by Beneficiary.

(ee) **Water Rights.**

(i) Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 4.1(ee), the term "Governmental Authorities" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Iron, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the Real Property subject to this Deed of Trust.

(ii) Trustor shall diligently place to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Trustor cannot place any quantity of water under the Water Rights to a beneficial use, Trustor shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.

(iii) Trustor shall promptly provide Beneficiary with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

(iv) Trustor shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide Beneficiary with evidence of each such payment.

(v) Trustor and its predecessors in interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.

(vi) As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Deed of Trust, means and included all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Property, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor; subject to the assignment to Beneficiary set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the State Engineer's approval of any application filed by Trustor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

Section 4.2 Trustor Agrees to Pay or Reimburse Beneficiary's Expenses. To the extent not prohibited by applicable law, Trustor will pay all reasonable and necessary costs and expenses and reimburse Beneficiary for any and all expenditures of every character incurred or expended from time to time, regardless of whether an Event of Default shall have occurred, in connection with:

(a) the preparation, negotiation, documentation, closing, renewal, revision, modification, increase, review or restructuring of any loan or credit facility secured by this Deed of Trust, including legal, accounting, auditing, architectural, engineering and inspection services and disbursements, or in connection with collecting or attempting to enforce or collect the Note or this Deed of Trust.

(b) Beneficiary's evaluating, monitoring, administering and protecting the Property.

(c) Beneficiary's creating, perfecting and realizing upon Beneficiary's security interest in and liens on the Property, and all costs and expenses relating to Beneficiary's exercising any of its rights and remedies under this Deed of Trust or any Credit Document or at law, including all appraisal fees, consulting fees, filing fees, taxes, brokerage fees and commissions, title review and abstract fees, litigation report fees, UCC search fees, other fees and expenses incident to title searches, reports and security interests, escrow fees, attorneys' fees, legal expenses, court costs, other fees and expenses incurred in connection with any

liquidation of the Property, and all fees and expenses for any professional services relating to the Property or any operations conducted in connection with it.

Provided, that no right or option granted by Trustor to Beneficiary or otherwise arising pursuant to any provision of this Deed of Trust, the Note or any Credit Document shall be deemed to impose or admit a duty on Beneficiary to supervise, monitor or control any aspect of the character or condition of the Property or any operations conducted in connection with it for the benefit of Trustor or any person or entity other than Beneficiary. Trustor agrees to indemnify, defend and hold Beneficiary, its shareholders, directors, officers, agents, attorneys, advisors and employees (collectively "Indemnified Parties") harmless from and against any and all loss, liability, obligation, damage, penalty, judgment, claim, deficiency, expense, action, suit, cost and disbursement of any kind or nature whatsoever (including interest, penalties, attorneys' fees and amounts paid in settlement), **REGARDLESS OF WHETHER CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES**, imposed on, incurred by or asserted against the Indemnified Parties growing out of or resulting from any Credit Document or any transaction or event contemplated therein (except that such indemnity shall not be paid to any Indemnified Party to the extent that such loss, etc. directly results from the gross negligence or willful misconduct of that Indemnified Party). Any amount to be paid under this Section by Trustor to Beneficiary shall be a demand obligation owing by Trustor to Beneficiary and shall bear interest from the date of expenditure until paid at the Past Due Rate.

ARTICLE 5 TRUSTOR'S REPRESENTATIONS AND WARRANTIES

To induce Beneficiary to extend financial accommodations, including credit under the Note, Trustor makes the warranties and representations set forth in this Article.

Section 5.1 Organization. If Trustor is not a natural person, (i) Trustor is duly organized, validly existing and in good standing under the laws of the state of its organization and has full legal right, power and authority to carry on its business as presently conducted and to execute, deliver and perform its obligations under this Deed of Trust and any other Credit Documents to which Trustor is a party, (ii) Trustor is duly qualified to do business and in good standing in each jurisdiction in which the nature of the business it conducts makes such qualification necessary or desirable and (iii) Trustor's execution, delivery and performance of this Deed of Trust and any other Credit Documents to which Trustor is a party have been duly authorized by all necessary action under Trustor's organizational documents and otherwise.

Section 5.2 Consents. Trustor's execution, delivery and performance of this Deed of Trust and any other Credit Documents to which Trustor is a party do not and will not require (i) any consent of any other person or entity or (ii) any consent, license, permit, authorization or other approval (including foreign exchange approvals) of any court, arbitrator, administrative agency or other governmental authority, or any notice to, exemption by, any registration, declaration or filing with or the taking of any other action in respect of, any such court, arbitrator, administrative agency or other governmental authority.

Section 5.3 No Conflict. Neither execution or delivery of this Deed of Trust or any other Credit Document to which Trustor is a party, nor the fulfillment of or compliance with the terms and provisions hereof or thereof will (i) violate any constitutional provision, law or rule, or any

regulation, order or decree of any governmental authority or the basic organizational documents of Trustor or (ii) conflict with or result in a breach of the terms, conditions or provisions of, or cause a default under, any agreement, instrument, franchise, license or concession to which Trustor is a party or bound.

Section 5.4 Enforceability. Trustor has duly and validly executed, issued and delivered this Deed of Trust and any other Credit Documents to which Trustor is a party. This Deed of Trust and each other Credit Document to which Trustor is a party is in proper legal form for prompt enforcement and is Trustor's valid and legally binding obligation, enforceable in accordance with its terms. Trustor's obligations under this Deed of Trust and any other Credit Documents to which Trustor is a party rank and will rank at least equal in priority of payment with all of Trustor's other debt (except only for debt preferred by operation of law or debt disclosed in writing to Beneficiary to be senior before Trustor's execution and delivery of this Deed of Trust or the other applicable Credit Document).

Section 5.5 Information Accurate. All information supplied to Beneficiary, and all statements made to Beneficiary by or on behalf of Trustor before, concurrently with or after Trustor's execution of this Deed of Trust are and will be true, correct, complete, valid and genuine in all material respects. Each of Trustor's financial statements furnished to Beneficiary fairly present the financial condition of Trustor as of its date and for the period then ended. No material adverse change has occurred in the financial condition reflected in any such statement since its date, and all assets listed on such statements are subject to Trustor's management, control and disposition and--except as shown therein--are available to satisfy any claims rightfully made pursuant to this Deed of Trust and any other Credit Documents to which Trustor is a party.

Section 5.6 Taxes. Trustor has filed all tax returns required to be filed and paid all taxes shown thereon to be due, including interest and penalties, except for taxes being diligently contested in good faith and for payment of which adequate reserves have been set aside.

Section 5.7 Litigation. There is no condemnation or other action, suit or proceeding pending--or, to the best of Trustor's knowledge, threatened--against or affecting Trustor or the Property, at law or in equity, or before or by any governmental authority, which might result in any material adverse change in Trustor's business or financial condition or in the Property or in Trustor's other property or Trustor's interest in it.

Section 5.8 No Defaults. Trustor is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental authority, in the payment of any debt for borrowed money or under any agreement or other papers evidencing or securing any such debt.

Section 5.9 Other Contracts. Trustor is not a party to any contract or agreement which materially and adversely affects its business, property, assets or financial condition.

Section 5.10 Trustor Solvent. Trustor is now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or--to Trustor's knowledge--against Trustor. Trustor's liabilities and obligations under this Deed of Trust and any other Credit Documents to which Trustor is a party do not and will not render Trustor insolvent, cause Trustor's liabilities to exceed Trustor's assets or leave Trustor with too little capital to properly conduct all of its business as now conducted or contemplated to be conducted.

Section 5.11 No False Representation. No representation or warranty contained in this Deed of Trust or any other Credit Document to which Trustor is a party and no statement contained in any certificate, schedule, list, financial statement or other papers furnished to Beneficiary by or on behalf of Trustor contains--or will contain--any untrue statement of material fact, or omits--or will omit--to state a material fact necessary to make the statements contained herein or therein not misleading.

Section 5.12 Title. Trustor has good and marketable title to the Property, free and clear of any lien or security interest except only for liens and security interests which are either established or expressly permitted by this Deed of Trust or other Credit Documents. Except as otherwise expressly permitted by this Deed of Trust, the lien and security interest of this Deed of Trust will constitute valid and perfected first and prior liens and security interests on the Property, subject to no other liens, security interests or charges whatsoever. The Property is free from damage caused by fire or other casualty.

Section 5.13 Regulation U. Except as disclosed to Beneficiary in writing prior to the date of this Deed of Trust, none of the proceeds of the Note or the other Debt will be used for the purpose of purchasing or carrying, directly or indirectly, any margin stock or for any other purpose which would make such credit a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System.

Section 5.14 Trustor Has All Necessary Rights. Trustor possesses all permits, licenses, patents, trademarks, trade names and copyrights required to conduct its business. All easements, rights-of-way, utilities and other rights necessary to maintenance and operation of the Property have been obtained and are in full force and effect.

Section 5.15 Legal Requirements. Trustor and the Property are in compliance with all applicable legal requirements and Trustor manages and operates (and will continue to manage and operate) the Property and its other businesses in accordance with good industry practices.

Section 5.16 Statements by Others. All statements made on behalf of Trustor in connection with this Deed of Trust, the Note or any Credit Document shall constitute the joint and several representations and warranties of the person making the statement and Trustor.

ARTICLE 6 DEFAULTS AND REMEDIES

Section 6.1 Reconveyance for Full Payment and Performance. Subject to the automatic reinstatement provisions of Section 10.22 below, this Deed of Trust shall terminate and be of no further force or effect (and shall be reconveyed on Beneficiary's written request and at Trustor's cost and expense) upon full payment of the Debt, complete performance of all of the obligations of the Obligor under the Credit Documents and final termination of Beneficiary's obligations--if any--to make any further advances under the Note or to provide any other financial accommodations to any Obligor.

Section 6.2 Events of Default. The occurrence of any of the following events shall constitute an Event of Default (herein so called) under this Deed of Trust:

(a) any condemnation proceeding is commenced relating to all or, in the judgment of Beneficiary, any material part of, the Property.

(b) any substantial damage to or destruction of the Property occurs and insurance proceeds (together with other funds deposited with Beneficiary by or on behalf of Trustor for the purpose of repair and restoration of such damage or destruction) are not, in the opinion of Beneficiary, sufficient to repair and restore the Property.

(c) a default, an event of default or a similar event (however denominated) shall occur under any Credit Document, unless such default, event of default or similar event is fully cured within any applicable cure period agreed to in writing by Beneficiary.

Section 6.3 Remedies. Upon the occurrence of any Event of Default, and at any time thereafter:

(a) **Debt Due.** All Debt (other than obligations now or hereafter owing to Beneficiary or any affiliate of Beneficiary under a Swap Agreement or under an agreement governing Banking Services) in its entirety shall, at the option of Beneficiary, become immediately due and payable without presentment, demand, notice of intention to accelerate or notice of acceleration, or other notice of any kind, all of which are hereby expressly WAIVED, and the liens and security interests created or intended to be created hereby shall be subject to foreclosure, repossession and sale in any manner provided for herein or provided for by law, as Beneficiary may elect, and Beneficiary may exercise any and all of its rights under this Deed of Trust, the Note and any of the other Credit Documents.

(b) **Legal Proceedings.** Trustee and Beneficiary shall have the right and power to proceed by suit or suits in equity or at law, whether for the specific performance of any covenant or agreement of Trustor contained herein or in aid of the execution of the powers herein granted, or for foreclosure or the sale of the Property under the judgment or decree of any court of competent jurisdiction, or for the enforcement of any other appropriate legal or equitable remedy.

(c) **Trustee's Sale.** It shall be the duty of the Trustee and of its successors and substitutes, on Beneficiary's request (which request is hereby presumed) to enforce this Deed of Trust by selling the Mortgaged Property as is provided in this Deed of Trust.

Section 6.4 Time and Place of Sale and Notices. For any sale under the power of sale granted by this Deed of Trust, Beneficiary or Trustee shall record and give all notices required by law and then, upon the expiration of such time as is required by law, Trustee may sell the Property upon any terms and conditions specified by Beneficiary and permitted by applicable law. Trustee may postpone any sale by public announcement at the time and place noticed for the sale. The Property, real, personal and mixed, may be sold in one parcel. To the extent any of the Property sold by the Trustee is personal property, then Trustee shall be acting as the agent of Beneficiary in selling such Property. Any person permitted by law to do so may purchase at any sale.

Section 6.5 Application of Foreclosure Sale Proceeds. The proceeds of any sale of the Mortgaged Property, and any rents and other amounts collected by Beneficiary from Beneficiary's holding, leasing, operating or making any other use of the Mortgaged Property, shall be applied by

Beneficiary (or by the receiver, if one is appointed) to the extent that funds are available therefrom in the following order of priority except as otherwise required by applicable law:

(a) **To Expenses and Senior Obligation Payments.** first, to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, maintaining, using, leasing, repairing, equipping, manning, improving, marketing and selling it, including (i) trustees' and receivers' fees, (ii) court costs, (iii) attorneys' and accountants' fees, (iv) costs of advertisement and brokers' commissions and (v) payment of any and all Impositions, liens, security interests or other rights, titles or interests superior to the lien and security interest of this Deed of Trust, whether or not then due and including any prepayment penalties or fees and any accrued or required interest (except, in the case of foreclosure proceeds, those senior liens and security interests, if any, subject to which the Mortgaged Property was sold at such trustee's sale, and without in any way implying Beneficiary's consent to the creation or existence of any such prior liens);

(b) **To Accrued Interest on the Debt.** second, to the payment of all accrued but unpaid interest due on the Debt;

(c) **To Other Debt.** third, to the payment of all other Debt (including without limitation obligations now or hereafter owing to Beneficiary (or an affiliate of Beneficiary) under a Swap Agreement or under an agreement governing Banking Services), irrespective of whether then matured, and if it is payable in installments and not matured, then to the installments in such order as Beneficiary shall elect;

(d) **To Junior Lienholders.** fourth, to the extent funds are available therefor out of the sale proceeds or any rents and, to the extent known by Beneficiary, to the payment of any debt or obligation secured by a subordinate deed of trust on or security interest in the Mortgaged Property; and

(e) **To Trustor.** fifth, to Trustor, its successors and assigns, or to whomsoever may be lawfully entitled to receive such proceeds.

Section 6.6 Beneficiary May Require Abandonment and Recommencement of Sale. If the Trustee or its substitute or successor should commence the sale, Beneficiary may at any time before the sale is completed direct the Trustee to abandon the sale, and may at any time or times thereafter direct the Trustee to again commence foreclosure; or, except as prohibited by applicable law, irrespective of whether foreclosure is commenced by the Trustee, Beneficiary may at any time after an Event of Default institute suit for collection of the Debt or foreclosure of this Deed of Trust. If Beneficiary should institute suit for collection of the Debt or foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of final judgment dismiss it and require the Trustee to sell the Mortgaged Property in accordance with the provisions of this Deed of Trust.

Section 6.7 [Intentionally Left Blank]

Section 6.8 Beneficiary May Bid and Purchase. Beneficiary shall have the right to become the purchaser at any sale made under this Deed of Trust, being the highest bidder, and credit given upon all or any part of the Debt shall be the exact equivalent of cash paid for the purposes of this Deed of Trust.

Section 6.9 Successor or Substitute Trustee. In case of absence, death, inability, refusal or failure of the Trustee in this Deed of Trust named to act, or in case he should resign (and he is hereby authorized to resign without notice to or consent of Trustor), or if Beneficiary shall desire, with or without cause, to replace the Trustee in this Deed of Trust named, or to replace any successor or substitute previously named, Beneficiary or any agent or attorney-in-fact for Beneficiary may name, constitute and appoint a successor and substitute trustee (or another one) without other formality than an appointment and designation in writing, which need not be acknowledged, filed or recorded to be effective, except only in those circumstances--if any--where acknowledgment, filing and/or recording is required by applicable law and such law also precludes Trustor from effectively waiving such requirement. Upon such appointment, this conveyance shall automatically vest in such substitute trustee, as Trustee, the estate in and title to all of the Mortgaged Property, and such substitute Trustee so appointed and designated shall thereupon hold, possess and exercise all the title, rights, powers and duties in this Deed of Trust conferred on the Trustee named and any previous successor or substitute Trustee, and its conveyance to the purchaser at any such sale shall be equally valid and effective as if made by the Trustee named in this Deed of Trust. Such right to appoint a substitute Trustee shall exist and may be exercised as often and whenever from any of said causes, or without cause, as aforesaid, Beneficiary or Beneficiary's agent or attorney-in-fact elects to exercise it. Notwithstanding the foregoing, this Section 6.9 and the rights and powers granted herein are subject to applicable law, including UCA Sections 57-1-21 and 57-1-22, and in the event of any conflict or inconsistency between the provisions of this Section 6.9 and applicable law, the applicable shall control.

Section 6.10 Right to Receiver. Upon the occurrence of an Event of Default or at any time after commencement of a Trustee's foreclosure sale or any legal proceedings under this Deed of Trust, Beneficiary may, at Beneficiary's election and by or through the Trustee or otherwise, make application to a court of competent jurisdiction for appointment of a receiver of the Property, as a matter of strict right, without notice to Trustor and without regard to the adequacy of the value of the Property for the repayment of the Debt, and Trustor hereby irrevocably consents to such an appointment. Any receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to possess, rent, maintain, repair and operate the Property upon such terms and conditions as may be approved by the court, and shall apply the rents realized in the same manner and order as foreclosure proceeds in accordance with Section 6.5.

Section 6.11 Tenants at Sufferance. Trustor agrees for itself and its heirs, legal representatives, successors and assigns, that if any of them shall hold possession of the Property or any part thereof subsequent to foreclosure hereunder, Trustor, or the parties so holding possession, shall become and be considered as tenants at sufferance of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for rental on said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

Section 6.12 Lifting of Automatic Stay. In the event that Trustor or any other Obligor is the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or similar proceeding, federal or state, voluntary or involuntary, under any present or future law or act, Beneficiary is entitled to the automatic and absolute lifting of any automatic stay as to the enforcement of its remedies under the Credit Documents against the security for the Debt, including

specifically the stay imposed by Section 362 of the United States Federal Bankruptcy Code, as amended. Trustor hereby consents to the immediate lifting of any such automatic stay, and will not contest any motion by Beneficiary to lift such stay. Trustor expressly acknowledges that the security for the Debt is not now and will never be necessary to any plan of reorganization of any type.

ARTICLE 7

BENEFICIARY'S RIGHT TO PERFORM TRUSTOR'S OBLIGATIONS

Section 7.1 Beneficiary May Elect to Perform Defaulted Obligations. If Trustor should fail to comply with any of its agreements, covenants or obligations under this Deed of Trust, the Note, or any other Credit Document, then Beneficiary (in Trustor's name or in Beneficiary's own name) may perform them or cause them to be performed for Trustor's account and at Trustor's expense, but shall have no obligation to perform any of them or cause them to be performed. Any and all expenses thus incurred or paid by Beneficiary shall be Trustor's obligations to Beneficiary due and payable on demand, or if no demand is sooner made, then they shall be due on or before four (4) years after the respective dates on which they were incurred, and each shall bear interest from the date Beneficiary pays it until the date Trustor repays it to Beneficiary, at the maximum nonusurious rate of interest from time to time permitted by whichever of applicable Texas or federal law from time to time permits the higher nonusurious interest rate (the "Ceiling Rate"), or, only if applicable law imposes no maximum nonusurious rate, then at the same rate as is provided for in the Note for interest on past due principal (the "Past Due Rate"). At all times, if any, as the Texas Finance Code shall establish the Ceiling Rate for any purpose under this Deed of Trust, the Ceiling Rate shall be the "weekly ceiling" as defined in the Texas Finance Code from time to time in effect. Upon making any such payment or incurring any such expense, Beneficiary shall be fully and automatically subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts owing by Trustor to Beneficiary pursuant to this or any other provision of this Deed of Trust shall automatically and without notice be and become a part of the Debt and shall be secured by this and all other instruments securing the Debt. The amount and nature of any such expense and the time when it was paid shall be fully established by the affidavit of Beneficiary or any of Beneficiary's officers or agents or by the affidavit of any original, substitute or successor Trustee acting under this Deed of Trust. Without notice to Trustor or any other person or entity, the Ceiling Rate and the Past Due Rate shall automatically fluctuate upward and downward as and in any amount by which the maximum nonusurious rate of interest permitted by such applicable law and the rate of interest as provided for in the Note for interest on past due principal fluctuate, respectively.

Section 7.2 Exercise of Rights is not Waiver or Cure of Default. The exercise of the privileges granted to Beneficiary in this Article shall in no event be considered or constitute a cure of the default or a waiver of Beneficiary's right at any time after an Event of Default to declare the Debt to be at once due and payable, but is cumulative of such right and of all other rights given by this Deed of Trust, the Note and the Credit Documents and of all rights given Beneficiary by law.

ARTICLE 8 TAX AND INSURANCE DEPOSITS

In addition to the Debt payments, promptly after Beneficiary requests it at any time that an Event of Default has occurred which is continuing, Trustor agrees to deposit with Beneficiary each month an amount equal to one-twelfth (1/12) of the aggregate of (i) the next succeeding premiums (or payments in respect of them, if premiums are financed) on all insurance policies which Trustor is required by or pursuant to this Deed of Trust to maintain on the Property, and (ii) the amount of the next succeeding annual tax payments, assessment installments, maintenance charges and other Impositions to become due and payable with respect to the Property, as estimated by Beneficiary, plus, with the first of such monthly deposits, an additional month's share (a twelfth) of such premiums and taxes for each month less than twelve remaining before the next payment thereof falls due. At least fifteen (15) days before the date on which any such insurance premium (or payment in respect of it, if premiums are financed) or any of the Impositions must be paid to avoid delinquency, promptly after Beneficiary's request, Trustor agrees to deliver to Beneficiary a statement or statements showing the amount of the premium (or payment in respect of it, if premiums are financed) or Impositions required to be paid and the name and mailing address of the concern or authority to which it is payable and, at the same time, Trustor agrees to deposit with Beneficiary such amounts as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance obligations or Impositions. Beneficiary shall have the right to and will, if, as and when requested by Trustor to do so, apply such deposits in payment of such insurance obligations and Impositions.

ARTICLE 9 ASSIGNMENT OF RENTS

Section 9.1 Assignment of Rents, Revenues, Income and Profits. Trustor hereby assigns and transfers to Beneficiary all rents, revenues, income and profits ("Rental") payable under each Lease (hereinafter defined) now or at any time hereinafter existing, such assignment being upon the terms set forth in Section 9.2 below. The term "Lease" or "Leases" means any oral or written agreement between Trustor and another person or entity to use or occupy all or any portion of the Property, together with any guaranties or security for the obligations of any tenant, lessee, sublessee or other person or entity having the right to occupy, use or manage any part of the Property under a Lease. Each time Trustor enters into a Lease, such Lease shall automatically become subject to this Article without further action. This Article 9 is subject to the Utah Uniform Assignment of Rents Act, UCA Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Article 9 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

Section 9.2 Assignment is Absolute; Grant of Revocable License to Trustor to Collect Rental before an Event of Default. The transfer of Rental to Beneficiary shall be upon the following terms: (a) until receipt from Beneficiary of notice of the occurrence of an Event of Default, Trustor shall have the right under a retained and reserved license (but limited as provided herein) to collect Rental and each tenant may pay Rental directly to Trustor; but after an Event of Default, Trustor's license shall automatically terminate and be revoked and to the extent Trustor

collects any Rental thereafter accruing or paid, Trustor covenants to hold all such Rental in trust for the use and benefit of Beneficiary; (b) upon receipt from Beneficiary of notice that an Event of Default exists, each tenant is hereby authorized and directed to pay directly to Beneficiary all Rental thereafter accruing or payable and receipt of Rental by Beneficiary shall be a release of such tenant to the extent of all amounts so paid; (c) Rental so received by Beneficiary shall be applied by Beneficiary, first to the expenses, if any, of collection and then in accordance with Section 6.5 hereof; (d) without impairing its rights hereunder, Beneficiary may, at its option, at any time and from time to time, release to Trustor Rental so received by Beneficiary, or any part thereof; (e) Beneficiary shall not be liable for its failure to collect or its failure to exercise diligence in the collection of Rental, but shall be accountable only for Rental that it shall actually receive; and (f) the assignment contained in this Article shall terminate upon the reconveyance of this Deed of Trust, but no tenant shall be required to take notice of termination until a copy of such reconveyance shall have been delivered to such tenant. The assignment contained in this Article is intended to be absolute, unconditional and presently effective. It shall never be necessary for Beneficiary to institute legal proceedings of any kind whatsoever to enforce the provisions of this Article. It is agreed that any Rental retained and reserved by Trustor pursuant to the aforementioned license will not constitute a payment by the Trustor to Beneficiary of any portion of the Debt (and hence will not be credited to the Debt) until the Rental is actually paid to the Beneficiary and retained by the Beneficiary and then, in such event, the Rental so received shall be applied in accordance with Section 9.2.

Section 9.3 Remedies. Should an Event of Default occur, Trustor agrees to deliver to Beneficiary possession and control of all Rental held by Trustor in trust for the benefit of Beneficiary. Trustor specifically agrees that Beneficiary may upon the occurrence of any Event of Default or at any time thereafter, personally or through an agent selected by Beneficiary, take--or have the Trustee take--possession and control of all or any part of the Property and may receive and collect all Rental theretofore accrued and all thereafter accruing therefrom until the final termination of this Deed of Trust or until the foreclosure of the lien of this Deed of Trust, applying so much thereof as may be collected before sale of the Property by the Trustee or judicial foreclosure of this Deed of Trust first to the expenses of Beneficiary incurred in obtaining the Rental and then applying the Rental so received in accordance with the provisions of Section 6.5 hereof. Any such action by Beneficiary shall not operate as a waiver of the Event of Default in question, or as an affirmation of any Lease or of the rights of any tenant in the event title to that part of the Property covered by the Lease or held by the tenant should be acquired by Beneficiary or other purchaser at foreclosure sale. Beneficiary, Beneficiary's agent or the Trustee may use against Trustor or any other person such lawful or peaceable means as the person acting may see fit to enforce the collection of any such Rental or to secure possession of the Property, or any part of it and may settle or compromise on any terms as Beneficiary, Beneficiary's agent or the Trustee sees fit, the liability of any person or persons for any such Rental. In particular, Beneficiary, Beneficiary's agent or the Trustee may institute and prosecute to final conclusion actions of forcible entry and detainer, or actions of trespass to try title, or actions for damages, or any other appropriate actions, in the name of Beneficiary, Trustor, or the Trustee, and may settle, compromise or abandon any such actions as Beneficiary, Beneficiary's agent or the Trustee may see fit; and Trustor binds itself and its successors and assigns to take whatever lawful or peaceable steps Beneficiary, Beneficiary's agent or the Trustee may ask of it or any such person or concern so claiming to take for such purposes, including the institution and prosecution of actions of the character above stated. However, neither Beneficiary, Beneficiary's agent nor the Trustee shall be obligated to collect any such Rental or be

liable or chargeable for failure to do so. Upon any sale of the Property or any part thereof in foreclosure of the lien or security interest created by this Deed of Trust, such Rental so sold which thereafter accrues shall be deemed included in such sale and shall pass to the purchaser free and clear of the assignment made in this Article. Nothing in this Section is intended to require the Beneficiary to institute any legal proceedings or engage in any self help remedies in order to make the absolute assignment of the Rental to Beneficiary operative.

Section 9.4 Beneficiary in Possession; No Liability of Beneficiary. Beneficiary's acceptance of this assignment shall not, before 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 proceeding 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 under the Leases including the obligation to return any deposit delivered to Trustor by any tenant. Beneficiary shall not be liable for any injury or damage to person or property in or about the Property. Neither the collection of Rental due under the Leases herein described nor possession of the Property by Beneficiary shall render Beneficiary liable with respect to any obligations of Trustor under any of the Leases.

Section 9.5 Additional Covenants, Warranties and Representations Concerning Leases and Rental. Trustor covenants, warrants and represents that:

(a) Neither Trustor nor any previous owner has entered into any prior oral or written assignment, pledge or reservation of the Rental, entered into any prior assignment or pledge of Trustor's landlord interests in any Lease or performed any act or executed any other instruments which might prevent or limit Beneficiary from operating under the terms and conditions of this Article;

(b) Trustor has good title to the Leases and Rental hereby assigned and the authority to assign same, and no other person or entity has any right, title or interest in and to the landlord's interests therein;

(c) All existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;

(d) No Rental has been, nor does Trustor anticipate that any Rental will be, waived, released, discounted, set off or compromised, except as disclosed to Beneficiary in writing before the date hereof;

(e) Except as disclosed to Beneficiary in writing before the date hereof, Trustor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rental;

(f) Trustor shall (i) perform all of the terms and conditions of the Leases, (ii) upon Beneficiary's request, execute an additional assignment to Beneficiary of all Leases then affecting the Property and all Rental and other sums due thereunder by assignment(s) in form and substance satisfactory to Beneficiary and (iii) at the request of Beneficiary, record such Leases and the assignment(s) thereof to Beneficiary. Trustor will not, without the prior written

consent of Beneficiary, amend, modify, extend, renew, terminate, cancel or surrender any Lease or suffer or permit any of the foregoing, orally or in writing;

(g) Trustor shall not execute any Lease unless the form of the Lease has been approved by Beneficiary and the tenant under such Lease and the terms of such Lease shall comply with leasing standards for the Property from time to time approved by Beneficiary in writing;

(h) Trustor shall enforce the tenants' obligations under the Leases;

(i) Trustor shall defend, at Trustor's expense, any proceeding pertaining to the Leases, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party;

(j) Trustor shall neither create nor permit any encumbrance upon its interest as landlord under the Leases, except for this Deed of Trust and any other encumbrances permitted by this Deed of Trust;

(k) Trustor shall not encumber or assign, or permit the encumbrance or assignment of, any Leases or Rental without the prior written consent of Beneficiary;

(l) Trustor shall from time to time make available for an on-site inspection by Beneficiary, within thirty (30) days after demand therefor, all Leases or any portion of the Leases specified by Beneficiary; and

(m) Trustor shall not in any event collect any Rental more than one (1) month in advance of the time it will be earned (and if Trustor does so, in addition to any other rights or remedies available by reason of such Event of Default, all Rental so collected more than one (1) month in advance of the time it is earned shall be delivered to Beneficiary to be applied to the Debt).

Section 9.6 Merger. There shall be no merger of the leasehold estates created by the Leases with the fee or any other estate in the Property without the prior written consent of Beneficiary.

Section 9.7 Reassignment. By Beneficiary's acceptance of this Deed of Trust, it is understood and agreed that a full and complete reconveyance of this Deed of Trust shall operate as a full and complete reassignment to Trustor of the Beneficiary's rights and interests under this Article (subject to the automatic reinstatement provisions of Section 10.22 below).

Section 9.8 Subordination of Deed of Trust to Leases. It is agreed and understood that Beneficiary hereby reserves the right and shall have the right, at any time and from time to time, without the consent or joinder of any other party, to subordinate this Deed of Trust and the liens, assignments and security interests created by this Deed of Trust to all or any of the Leases regardless of the respective priority of any of such Leases and this Deed of Trust. Upon doing so and filing evidence of such subordination in the real property records in the county or counties where the Real Property is located, a foreclosure of Beneficiary's liens, assignments and security interests under this Deed of Trust shall be subject to and shall not operate to extinguish any of said Leases as to which such subordination is operative.

ARTICLE 10
GENERAL AND MISCELLANEOUS PROVISIONS

Section 10.1 Intentionally Left Blank.

Section 10.2 Debt May be Changed without Affecting this Deed of Trust. Any of the Debt may be extended, rearranged, renewed, increased or otherwise changed in any way, and any part of the security described in this Deed of Trust or any other security for any part of the Debt may be waived or released without in anyway altering or diminishing the force, effect or lien of this Deed of Trust, and the lien, assignment and security interest granted by this Deed of Trust shall continue as a prior lien, assignment and security interest on all of the Property not expressly so released, until the final termination of this Deed of Trust.

Section 10.3 Security is Cumulative. No other security now existing or hereafter taken to secure any part of the Debt or the performance of any obligation or liability whatever shall in any manner affect or impair the security given by this Deed of Trust. All security for any part of the Debt and the performance of any obligation or liability shall be taken, considered and held as cumulative.

Section 10.4 Usury Not Intended; Savings Provisions. Notwithstanding any provision to the contrary contained in any Credit Document, it is expressly provided that in no case or event shall the aggregate of any amounts accrued or paid pursuant to this Deed of Trust which under applicable laws are or may be deemed to constitute interest ever exceed the maximum nonusurious interest rate permitted by applicable Texas or federal laws, whichever permit the higher rate. In this connection, Trustor and Beneficiary stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. In furtherance thereof, none of the terms of this Deed of Trust shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. Trustor shall never be liable for interest in excess of the maximum rate permitted by applicable laws. If, for any reason whatever, such interest paid or received during the full term of the applicable indebtedness produces a rate which exceeds the maximum rate permitted by applicable laws, Beneficiary shall credit against the principal of such indebtedness (or, if such indebtedness shall have been paid in full, shall refund to the payor of such interest) such portion of said interest as shall be necessary to cause the interest paid to produce a rate equal to the maximum rate permitted by applicable laws. All sums paid or agreed to be paid to Beneficiary for the use, forbearance or detention of money shall, to the extent required to avoid or minimize usury and to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the applicable indebtedness so that the interest rate thereon does not exceed the Ceiling Rate. The provisions of this Section shall control all agreements, whether now or hereafter existing and whether written or oral, between Trustor and Beneficiary.

Section 10.5 Trustor Waives All Stay, Extension, Appraisal and Redemption Rights. Trustor will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any stay or extension law now or at any time hereafter in force in any locality where the Property or any part thereof may or shall be situated, nor will Trustor claim, take or insist on any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the Property or any part thereof before any sale or sales thereof to be made pursuant to any provision of this Deed of Trust, or to decree of any court of competent jurisdiction, nor after

any such sale or sales made pursuant to any provision of this Deed of Trust, or to decree of any court of competent jurisdiction, nor after any such sale or sales will Trustor claim or exercise any right conferred by any law now or at any time hereafter in force to redeem the property so sold or any part of it, and Trustor hereby WAIVES all benefit and advantage of any such law or laws and WAIVES the appraisalment of the Property or any part of it and covenants that Trustor will not hinder, delay or impede the execution of any power in this Deed of Trust granted and delegated to the Trustee or Beneficiary, but that Trustor will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Section 10.6 Subrogation to Liens Discharged. Trustor hereby agrees that Beneficiary shall be subrogated to all rights, titles, interests, liens, benefits, remedies, equities, superior title and security interests (the "Subrogated Liens") owned, claimed or held as security for any debt or other obligation (the "Discharged Obligations") directly or indirectly satisfied, discharged or paid with money or other property advanced by Beneficiary. Irrespective of any formal or informal acknowledgment of partial or complete satisfaction or release of the Discharged Obligations, the Subrogated Liens shall be continued, renewed, extended, brought forward and rearranged as security for the Debt in addition to and cumulative of the lien and security interest of this Deed of Trust. Foreclosure under this Deed of Trust shall constitute foreclosure of the Subrogated Liens.

Section 10.7 [Intentionally left Blank]

Section 10.8 Due on Sale. Trustor agrees that if, without Beneficiary's prior written consent, (a) any part of the Property or any interest either in the Property or in the beneficial equity ownership of any Trustor which is not a natural person (an "Equity Interest") should be directly or indirectly transferred, conveyed or mortgaged, voluntarily or involuntarily, absolutely or as security, or (b) Trustor should enter into any contractual arrangement to transfer, convey or mortgage any part of the Property or any interest either in the Property or in an Equity Interest, Beneficiary shall have the right and option (except only in those circumstances, if any, where the exercise of such right is expressly prohibited by applicable law and such law also precludes Trustor from effectively waiving such prohibition) to declare the Note or the entire amount of the Debt to be due and payable. Beneficiary shall have such right and option absolutely and irrespective of whether or not the transfer, conveyance or mortgage would or might (i) diminish the value of any security for the Debt, (ii) increase the risk of default under this Deed of Trust, (iii) increase the likelihood of Beneficiary's having to resort to any security for the Debt after default or (iv) add or remove the liability of any person or entity for payment of the Debt or performance of any covenant or obligation under this Deed of Trust. To exercise such right and option, Beneficiary shall give written notice to Trustor and to the person or entity to whom such property was transferred, conveyed or mortgaged that the Note or Debt has been declared due and payable and that Beneficiary demands that its maker pay it. If Beneficiary's consent to a proposed transfer, conveyance or mortgaging is requested, Beneficiary shall have the right (in addition to its absolute right to refuse to consent to any such transaction) to condition its consent upon satisfaction of any one or more of the following requirements: (1) that the interest rate(s) on all or any part of the Debt be increased to a rate which is then acceptable to Beneficiary; (2) that a reasonable transfer fee, in an amount determined by Beneficiary, be paid; (3) that a principal amount deemed appropriate by Beneficiary be paid against the Debt to reduce the ratio that the outstanding balance of the Debt bears to the value of the Property as determined by Beneficiary to a level which is then acceptable to Beneficiary; (4) that Trustor and each proposed transferee execute an assumption agreement and

such other instruments as Beneficiary or its counsel shall reasonably require and in form and substance satisfactory to Beneficiary and its counsel; (5) that the proposed transferee's creditworthiness and experience in owning and operating similar properties be demonstrable and proven to Beneficiary's reasonable satisfaction to be at least as good as Trustor's and Trustor's managers' at the time the Note was first funded; (6) that the liability to Beneficiary of Trustor and all makers and guarantors of all or any part of the Debt will be confirmed by them in writing to be unaffected and unimpaired by such transfer, conveyance or mortgaging and (7) that any existing or proposed junior mortgagee expressly subordinate to all liens and security interests securing the Debt as to both lien and payment right priority and consent to the proposed transaction in a writing addressed to Beneficiary.

Section 10.9 Condemnation. If before final termination of this Deed of Trust, all or a portion of the Property is taken for public or quasi-public purposes, either through eminent domain or condemnation proceedings, by voluntary conveyance under threat of condemnation with Beneficiary's express written consent and joinder or otherwise, Trustor hereby agrees that any and all sums of money awarded or allowed as damages, payments in lieu of condemnation awards or otherwise to or for the account of the owner of the Property or any portion of it on account of such taking shall be paid and delivered to Beneficiary, and they are hereby assigned to Beneficiary, and shall be paid directly to Beneficiary. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be applied, first, to reimburse Beneficiary or the Trustee for all costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the discretion of Beneficiary, to the payment of the Debt in the order determined by Beneficiary in its sole discretion, or paid out to repair or restore the Property so affected by such condemnation, injury or damage in the same manner as provided in Section 4.1(h) above. Trustor agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Beneficiary may request. Beneficiary is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Beneficiary shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

Section 10.10 Appraisals and Reports to be Provided. Subject to Section 32 of the Note, Beneficiary (by its officers, employees, directors or agents) at any time and from time to time, and at Trustor's sole cost and expense (to the extent not prohibited by applicable law), may contract for the services of an appraiser approved by Beneficiary in its sole discretion to perform a written appraisal of the Property (or such parts of it as are designated in Beneficiary's request). Any such appraisal may be performed at any time or times upon reasonable notice to Trustor, as long as it does not unreasonably interfere with Trustor's use of the Property. Specifically, any such appraiser is authorized to enter upon, and Trustor shall allow such appraiser access to, the Property as may be necessary in the opinion of such appraiser to perform its professional services. Trustor will also furnish such appraiser such historical and operational information regarding the Property as may be reasonably requested by such appraiser to facilitate preparation of an appraisal and will make available for meetings with such appraiser appropriate personnel having knowledge of such matters. Trustor will permit Beneficiary and its agents, independent contractors, representatives, employees and officers at all reasonable times to go upon, examine, inspect and remain on the Property for any lawful purpose and will furnish to Beneficiary on request all pertinent information in regard to the

development, operation, use and status of the Property. Promptly upon Beneficiary's request, Trustor agrees, at Trustor's sole cost and expense (to the extent not prohibited by applicable law):

(a) to cause an inspection and written appraisal of the Property (or such parts of it as are designated in Beneficiary's request) to be made by a qualified appraiser approved by Beneficiary; and

(b) to cause to be conducted or prepared any other written report, summary, opinion, inspection, review, survey, audit or other professional service relating to the Property or any operations in connection with it (all as designated in Beneficiary's request), including any accounting, architectural, consulting, engineering, design, legal, management, pest control, surveying, toxic or hazardous materials survey, inspection, removal or cleanup work, title abstracting or other technical, managerial or professional service relating to the Property or its operations.

Beneficiary may elect to deliver any such request orally, by telegram, telex or telefax, by mail or by hand delivery addressed to Trustor as provided in the Introduction to this Deed of Trust or by any other legally effective method, and it may be given at any time and from time to time before the complete and final release, reconveyance and discharge of this Deed of Trust. Any amount to be paid under this Section by Trustor to Beneficiary shall be a demand obligation owing by Trustor to Beneficiary and shall bear interest from the date of expenditure at the Past Due Rate.

Section 10.11 Notices. Except where certified or registered mail notice is required by applicable law, service of any notice to Trustor required or permitted under this Deed of Trust shall be completed upon deposit of the notice, enclosed in a first class postage prepaid wrapper, properly addressed to Trustor at Trustor's address designated in the Introduction to this Deed of Trust (or if no address is so designated, or such address has changed, to Trustor's most recent address as shown by the records of Beneficiary) in a post office or official depository under the care and custody of the United States Postal Service, and the affidavit of any person having knowledge of the facts concerning such mailing shall be conclusive evidence of the fact of such service. Such method of giving notice shall not be exclusive, but instead any notice may be given to Trustor in any manner permitted or recognized by law.

Section 10.12 Beneficiary and Trustor. The term "Beneficiary" as used in this Deed of Trust shall mean and include the holder or holders of the Debt from time to time, and upon acquisition of the Debt by any holder or holders other than the named Beneficiary, effective as of the time of such acquisition, the term "Beneficiary" shall mean all of the then holders of the Debt, to the exclusion of all prior holders not then retaining or reserving an interest in the Debt from time to time, whether such holder acquires the Debt through succession to or assignment from a prior Beneficiary. The term "Trustor, its successors and assigns" shall also include the heirs and legal representatives of each Trustor who is a natural person and the receivers, conservators, custodians and trustees of each Trustor, provided that no Trustor may assign or delegate any of its rights, interests or obligations under this Deed of Trust, the Note or any Credit Document without Beneficiary's express prior written consent, and any attempted assignment or delegation without it shall be void or voidable at Beneficiary's election.

Section 10.13 Article, Section and Exhibit References, Numbers and Headings. References in this Deed of Trust to Articles, Sections and Exhibits refer to Articles, Sections and Exhibits in and

to this Deed of Trust unless otherwise specified. The Article and Section numbers, Exhibit designations and headings used in this Deed of Trust are included for convenience of reference only and shall not be considered in interpreting, applying or enforcing this Deed of Trust.

Section 10.14 Exhibits Incorporated. All exhibits, annexes, appendices and schedules referred to any place in the text of this Deed of Trust are hereby incorporated into it at that place in the text, to the same effect as if set out there verbatim.

Section 10.15 “Including” is not Limiting. Wherever the term “including” or a similar term is used in this Deed of Trust, it shall be read as if it were written, “including by way of example only and without in any way limiting the generality of the clause or concept referred to.”

Section 10.16 Gender. The masculine and neuter pronouns used in this Deed of Trust each includes the masculine, feminine and neuter genders.

Section 10.17 Severability. If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and this Deed of Trust shall be liberally construed so as to carry out the intent of the parties to it. Each waiver in this Deed of Trust is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against Beneficiary for having bargained for and obtained it.

Section 10.18 Any Unsecured Debt is Deemed Paid First. If any part of the Debt cannot lawfully be secured by this Deed of Trust, or if the lien, assignments and security interest of this Deed of Trust cannot be lawfully enforced to pay any part of the Debt, then and in either such event, at the option of Beneficiary, all payments on the Debt shall be deemed to have been first applied against that part of the Debt.

Section 10.19 Noun, Pronoun and Verb Numbers. When this Deed of Trust is executed by more than one person, corporation, partnership, joint venture, trust or other legal entity, it shall be construed as though “Trustor” were written “Trustors” and as though the pronouns and verbs in their number were changed to correspond, and in such case, (a) each of Trustors shall be bound jointly and severally with one another to keep, observe and perform the covenants, agreements, obligations and liabilities imposed by this Deed of Trust upon the “Trustor”, (b) a release of one or more persons, corporations or other legal entities comprising “Trustor” shall not in any way be deemed a release of any other person, corporation or other legal entity comprising “Trustor” and (c) a separate action hereunder may be brought and prosecuted against one or more of the persons, corporations or other legal entities comprising “Trustor” without limiting any liability of or impairing Beneficiary’s right to proceed against any other person, corporation or other legal entity comprising “Trustor”.

Section 10.20 [Intentionally Left Blank]

Section 10.21 Household Goods Not Covered. If Beneficiary is a state or national bank and if any natural person executing this Deed of Trust is a “consumer” as defined in Regulation AA of the Board of Governors of the Federal Reserve System, no lien or security interest created or evidenced by this Deed of Trust shall extend to, cover or affect “household goods” as also defined therein and

no waiver of the rights of Trustor contained in this or any other instrument shall extend to, or be effective as to, any right the waiver of which is prohibited by Regulation AA. If Beneficiary is not a state or national bank and if any natural person executing this Deed of Trust is a "consumer" as defined in 16 C.F.R. § 444.1(d), as amended, no lien or security interest created or evidenced by this Deed of Trust shall extend to, cover or affect "household goods" as defined in 16 C.F.R. § 444.1(a), as amended and no waiver of the rights of Trustor contained in this or any other instrument shall extend to, or be effective as to, any right the waiver of which is prohibited by 16 C.F.R § 444.

Section 10.22 Payments Returned. Trustor agrees that, if at any time all or any part of any payment previously applied by Beneficiary to the Debt is or must be returned by Beneficiary--or recovered from Beneficiary--for any reason (including the order of any bankruptcy court), this Deed of Trust shall automatically be reinstated to the same effect as if the prior application had not been made, and, in addition, Trustor hereby agrees to indemnify Beneficiary against, and to save and hold Beneficiary harmless from any required return by Beneficiary--or recovery from Beneficiary--of any such payment because of its being deemed preferential under applicable bankruptcy, receivership or insolvency laws, or for any other reason.

Section 10.23 Amendments in Writing. This Deed of Trust shall not be changed orally but shall be changed only by agreement in writing signed by Trustor and Beneficiary. Any waiver or consent with respect to this Deed of Trust shall be effective only in the specific instance and for the specific purpose for which given. No course of dealing between the parties, no usage of trade and no parole or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Deed of Trust.

Section 10.24 Beneficiary's Offset Rights. Beneficiary is hereby authorized at any time and from time to time, without notice to any person or entity (and Trustor hereby WAIVES any such notice) to the fullest extent permitted by law, to set-off and apply any and all monies, securities and other properties of Trustor now or in the future in the possession, custody or control of Beneficiary, or on deposit with or otherwise owed to Trustor by Beneficiary--including all such monies, securities and other properties held in general, special, time, demand, provisional or final accounts or for safekeeping or as collateral or otherwise (but excluding those accounts clearly designated as escrow or trust accounts held by Trustor for others unaffiliated with Trustor)--against any and all of Trustor's obligations to Beneficiary now or hereafter existing under this Deed of Trust, irrespective of whether Beneficiary shall have made any demand under this Deed of Trust. Beneficiary agrees to use reasonable efforts to promptly notify Trustor after any such set-off and application, provided that failure to give--or delay in giving--any such notice shall not affect the validity of such set-off and application or impose any liability on Beneficiary. Beneficiary's rights under this Section are in addition to other rights and remedies (including other rights of set-off) which Beneficiary may have.

Section 10.25 Governing Law. THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS EXCEPT TO THE EXTENT (a) OF PROCEDURAL AND SUBSTANTIVE MATTERS RELATING ONLY TO THE CREATION, PERFECTION AND FORECLOSURE OF LIENS, AND ENFORCEMENT OF RIGHTS AND REMEDIES AGAINST THE AFFECTED PROPERTY, THE LEASES AND THE RENTALS AND, TO THE EXTENT REQUIRED BY UTAH LAW, ANY OTHER PROPERTY COVERED HEREBY, WHICH MATTERS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH, AND (b) THAT THE LAWS OF THE UNITED STATES OF AMERICA AND

ANY RULES, REGULATIONS, OR ORDERS ISSUED OR PROMULGATED THEREUNDER, APPLICABLE TO THE AFFAIRS AND TRANSACTIONS ENTERED INTO BY BENEFICIARY, OTHERWISE PRE-EMPT UTAH OR TEXAS LAW, IN WHICH EVENT SUCH FEDERAL LAW SHALL CONTROL.

Section 10.26 Entire Agreement. This Deed of Trust embodies the entire agreement and understanding between Trustor and Beneficiary with respect to its subject matter and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Trustor acknowledges and agrees that there is no oral agreement between Trustor and Beneficiary which has not been incorporated in this Deed of Trust. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

Section 10.27 Obligations of Environmental Indemnity. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the obligations evidenced by or arising under any environmental indemnity made by Trustor with respect to the Mortgaged Premises.

Section 10.28 Waiver of Certain Rights. With respect to the Mortgaged Property (which Mortgaged Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, Utah Code Annotated § 78B-6-901. Notwithstanding anything to the contrary, Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Annotated § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

[signature page follows]

EXECUTED effective as of ^{September} ~~August~~ 1, 2015.

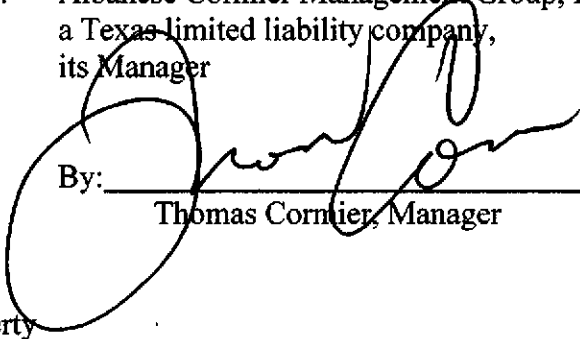
NOTICE PURSUANT TO TEX. BUS. & COMM. CODE §26.02

THIS DEED OF TRUST AND THE OTHER CREDIT DOCUMENTS TOGETHER CONSTITUTE A WRITTEN LOAN AGREEMENT AND REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

ACS CEDAR SOUTH UT, LLC,
a Nevada limited liability company

By: ACS Management Group, LLC,
a Nevada limited liability company,
its Manager

By: Albanese Cormier Management Group, LLC,
a Texas limited liability company,
its Manager

By: 

Thomas Cormier, Manager

Exhibit A--description of the Real Property
Exhibit B--Environmental Laws

[Signature Page for Deed of Trust]

THE STATE OF TEXAS §
 §
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on this 9th day of August, 2015, by Thomas Cormier, Manager of Albanese Cormier Management Group, LLC, a Texas limited liability company, acting in its capacity as the Manager of (and thereby as the act and deed of) ACS Management Group, LLC, a Nevada limited liability company, acting in its capacity as the Manager of (and thereby as the act and deed of) ACS CEDAR SOUTH UT, LLC, a Nevada limited liability company, on behalf of said limited liability companies.

Marti Lynch
Notary Public in and for
the State of TEXAS
Name printed: Marti Lynch
My Commission Expires: 1-19-2019



[Signature Page for Deed of Trust]

EXHIBIT A

Legal Description

Cedar South Shopping Center

Parcel 1: (Part of Tax ID B-1152-0005-0000)

Commencing 371.48 feet North 0°16' West of the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 23, Township 36 South, Range 11 West, Salt Lake Base Meridian; thence North 0°16' West 324.92 feet, more or less, to the Southeasterly Right-of-Way line of State Route No. 130 (Old U.S. Highway 91, also known as South Main Street); thence North 45°37' East along the said Right-of-way a distance of 311.00 feet; thence South 44°23' East 173.10 feet; thence Southeasterly along the arc of a 382.5 foot radius curve to the right 21.40 feet (the Chord of which bears South 42°47' East 21.40 feet, said curve has a Delta Angle of 3°12'00"); thence North 45°37' East 114.10 feet to the Southwesterly line of Pine Street at a corner common to Lots 2 and 3, Block 4 of the original Plat of Valley View Subdivision; thence South 44°23' East 36.90 feet; thence Southeasterly along the arc of a 352.50 foot radius curve to the right 272.34 feet (the Chord of which bears South 22°15' East 265.61 feet, said curve has a Delta Angle of 44°16'00"); thence South 0°07' East 208.00 feet; thence South 89°44' West 564.73 feet to the point of Beginning.

Parcel 2: (Tax ID No. B-1152-0005-0004)

Commencing at the Southwest Corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 23, Township 36 South, Range 11 West, Salt Lake Base and Meridian; thence North 0°16'00" West, 150.00 feet; thence North 89°44'00" East, 285.23 feet; thence South 0°16'00" East, 26.52 feet; thence North 89°44'00" East, 75.00 feet; thence South 0°16'00" East, 170.49 feet (107.50 feet of record); thence South 89°15'30" West, 360.28 feet (360.37 feet of record); thence North 0°13'45" West (North 0°07'00" West record) 50.00 feet along the Section line to the point of beginning.

Parcel 2A:

A perpetual, nonexclusive easement for purposes of ingress and egress of vehicular and pedestrian traffic over and across the following described land (which said easement was provided to in that certain Warranty Deed recorded in Iron County, Utah on July 16, 1981 as Entry No. 228615 in Book 278 at Page 288): Commencing 150.00 feet North 0°16' West of the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of Section 23, Township 36 South, Range 11 West, Salt Lake Base and Meridian; thence North 0°16' West 281.48 feet; thence North 89°44' East 30.00 feet; thence South 0°16' East 281.48 feet; thence South 89°44' West 30.00 feet to the beginning, as disclosed by instrument recorded August 29, 2001 as Entry No. 438138 in Book 763 at Pages 806-809, Official Iron County Records.

Also, all of the easements, rights, covenants, restrictions, and requirements which are appurtenances of and/or intended to benefit the Parcel (i.e., Parcel 1) in question and which are created or provided for in that certain "Covenants recorded in Iron County, Utah on July 16, 1981 as Entry No. 228617 in Book 278 at Page 298, as said instrument as heretofore been amended by that certain First Amendment thereto

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recorded on November 17, 1981 as Entry No. 231361 in Book 284 at Page 113 and by that certain Second Amendment thereto, dated February 15, 1982, recorded on May 12, 1982 as Entry No. 235091 in Book 289 at Page 932, Official Iron County Records.

Parcel 3: (Part of Tax ID B-1152-0005-0000)

Beginning at the most Easterly corner of Lot 2, Block 4, Valley View Subdivision, Cedar City, Utah; thence South 45°37'00" West, 114.10 feet along the Southeasterly line of said Lot 2; thence along the arc of a non-tangent curve to the left, having a radius of 382.50 feet, a distance of 21.40 feet (the chord of which bears North 42°47' West, 21.40 feet, said curve has a delta angle of 3°12'00"); thence North 44°23'00" West, 174.41 feet (173.10 feet record); thence North 45°37'00" East, 143.50 feet along the Southeasterly Right-of-Way line of Highway SR-130; thence South 44°23'00" East, 195.81 feet (194.50 feet record) along the center line of Pine Street; thence South 45°37'00" West, 30.00 feet to the point of Beginning.

Parcel 4: (Tax ID No. B-1135-0001-0000)

Beginning at the Northeast Corner of W.H. Leigh Subdivision; said point also being located on the Southeasterly right of way of State Route No. 130 at a point North 0°16'00" West, 696.40 feet from the Southeast Corner of the Northeast Quarter of the Northeast Quarter (NE¼NE¼) of Section 22, Township 36 South, Range 11 West, Salt Lake Base and Meridian; thence South 0°16'00" East, along the Subdivision boundary 222.13 feet to an intersection with Northeasterly right of way of Fir Street: thence following said right of way, Northwesterly around the arc of a curve to the left, the radius point of which is located South 89°44'00" West, 229.10 feet, a distance of 176.40 feet to an intersection with the Southeasterly right of way of State Route 130; thence along said right of way North 45°37'00" East, 90.00 feet to the point of beginning.

Less and Excepting therefrom, that portion conveyed to Cedar City Corporation, by Warranty Deed recorded December 14, 2011 as Entry No. 624308 in Book 1228 at Page 642 of Official Records, being more particularly described as follows:

Beginning at a point North 0°16'00" West 517.37 feet along the East boundary of W.H. Leigh Subdivision and South 90°00'00" West 3.85 feet from the Southeast corner of the NE ¼ NE ¼ of Section 22, Township 36 South, Range 11 West, Salt Lake Base and Meridian. Said point of beginning being a P.O.C. on a 229.10 foot radius curve; thence counterclockwise along arc of curve and East line of Fir Street 134.36 feet through a central angle of 33°36'08" (chord bears N 27°34'56") to the Southeast right-of-way line of U.S. Highway 91 (Main Street); thence North 45°37'00" East, 24.06 feet along said R/W line to the P.C. of a 15.00 foot radius curve; thence counterclockwise along arc of curve 22.67 feet thru a central angle of 86°36'33" (chord bears S 2°18'43" W) to the P.R.C. of a 238.60 foot radius curve; thence clockwise along arc of curve 27.12 feet thru a central angle of 6°30'47" (chord bears S 37°44'09"E) to the P.C.C. of a 74.50 foot radius curve; thence clockwise along arc of curve 20.21 feet thru a central angle of 15°32'35" (chord bears S26°42'29" E) thence South 18°56'11" East 42.41 feet; thence South 9°14'51" East 34.56 feet to the point of beginning. Basis of bearings is N 0°07'14" W between the Southeast corner and Northeast corner of the NE ¼ NE ¼ of said Section 22.

Parcel 5: (Tax ID No. B-1135-0079-0001 and B-1135-0003-0000)

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Beginning at the Northeast Corner of the Southeast Quarter of the Northeast Quarter (SE¼NE¼) of Section 22, Township 36 South, Range 11 West, Salt Lake Base and Meridian; thence South 0°13'45" East, 100.00 feet along the Section line; thence South 89°42'00" West, 258.70 feet to a point on the Easterly line of Fir Street; thence along the Easterly line of Fir Street as follows: thence North 0°16'00" West, 40.61 feet; thence Northeasterly along the arc of a curve to the right, having a radius of 168.00 feet, a distance of 134.54 feet; thence North 45°37'00" East, 247.50 feet; thence along the arc of a curve to the left, having a radius of 100.00 feet, a distance of 80.08 feet; thence departing said Fir Street, South 0°16'00" East, 304.80 feet to the point of beginning.

Parcel 6: (Part of Tax ID B-1152-0005-0000)

Beginning at the most Easterly corner of Lot 2, Block 4, Valley View Subdivision, thence North 45°37'00" East, 30.00 feet; thence along the centerline of Pine Street as follows; thence South 44°23'00" East, 36.90 feet; thence along the arc of a curve to the right, having a radius of 382.50 feet, a distance of 143.01 feet; thence departing said street centerline South 0°07'00" East" 148.49 feet, to a point being North 0°07'00" West, 5.0 feet from the Northeast Corner of Lot 7, Block 4, Valley View Subdivision; thence along the arc of a curve to the left (Note: Radius point for said curve bears South 89°53'00" West, 352.50 feet) a distance of 272.34 feet; thence North 44°23'00" West 36.90 feet to the point of beginning.

The above referenced legal is the same as that shown and described on that certain ALTA/ACSM Land Title Survey prepared by Tim Watson, P.L.S. #5049564, of Watson Engineering Company, Inc., dated August 25, 2015 and designated as WEC Project No. 15-1656, and last revised August 31, 2015 (the "Survey") and being more particularly described as follows:

PARCEL 1 (B-1152-0005-0000):

COMMENCING N00°16'06"W (N00°16'00"W RECORD) 371.48 FEET FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE MERIDIAN; THENCE N00°16'06"W 326.23 FEET (N00°16'00"W 324.92 FEET RECORD), TO THE SOUTHEASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF STATE ROUTE NO. 130 (OLD U.S. HIGHWAY 91, ALSO KNOWN AS SOUTH MAIN STREET); THENCE ALONG SAID R.O.W. N45°36'54"E 310.03 FEET (N45°37'00"E 311.00 FEET RECORD); THENCE S44°23'06"E 174.41 FEET (S44°23'00"E 173.10 FEET RECORD) TO A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF A 382.5 FOOT RADIUS CURVE TO THE RIGHT 21.41 FEET (21.40 FEET RECORD), THE CHORD OF WHICH BEARS S42°46'54"E (S42°47'00"E RECORD) 21.40 FEET, SAID CURVE HAS A DELTA ANGLE OF 03°12'24" (03°12'00"RECORD); THENCE N45°36'54"E 114.11 FEET (N45°37'00"E 114.10 FEET RECORD) TO THE SOUTHWESTERLY LINE OF PINE STREET AT A CORNER COMMON TO LOTS 2 AND 3, BLOCK 4 OF THE ORIGINAL PLAT OF VALLEY VIEW SUBDIVISION; THENCE S44°23'06"E 36.90 FEET TO A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF A 352.50 FOOT RADIUS CURVE TO THE RIGHT 272.33 (272.34 FEET RECORD), THE CHORD OF WHICH BEARS S22°14'52"E 265.61 FEET, SAID CURVE HAS A DELTA ANGLE OF 44°15'55" (44°16'00" RECORD); THENCE S00°07'06"E (S00°07'00"E RECORD) 208.00 FEET; THENCE S89°45'46W 564.95 (S89°44'00"W 564.73 FEET RECORD) TO THE POINT-OF-BEGINNING (P.O.B.) AND CONTAINS 5.65 ACRES

PARCEL 2 (B-1152-0005-0004):

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COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE MERIDIAN; THENCE N00°16'06"W (N00°16'00"W RECORD) 150.00 FEET; THENCE N89°43'54"E (N89°44'00"E RECORD) 285.23 FEET; THENCE S00°16'06"E (S00°16'00"E RECORD) 26.52 FEET; THENCE N89°43'54"E (N89°44'00"E RECORD) 75.00 FEET; THENCE S00°16'06"E (S00°16'00"E RECORD) 170.49 FEET; THENCE S89°15'24"W (S89°15'30"W RECORD) 360.28 FEET TO A POINT ON THE WEST SECTION LINE OF SAID SECTION 23; THENCE N00°13'51"W (N00°13'45"W RECORD) 50.00 FEET ALONG THE SECTION LINE TO THE POINT-OF-BEGINNING (P.O.B.) AND CONTAINS 1.60 ACRES.

PARCEL 2A:

A PERPETUAL, NONEXCLUSIVE EASEMENT FOR PURPOSES OF INGRESS AND EGRESS OF VEHICULAR AND PEDESTRIAN TRAFFIC OVER AND ACROSS THE FOLLOWING DESCRIBED LAND (WHICH SAID EASEMENT WAS PROVIDED TO IN THAT CERTAIN WARRANTY DEED RECORDED IN IRON COUNTY, UTAH ON JULY 16, 1981 AS ENTRY NO. 228615 IN BOOK 278 AT PAGE 288): COMMENCING N00°16'06"W (N00°16'00"W RECORD) 150.00 FEET FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW¼NW¼) OF SECTION 23, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE MERIDIAN; THENCE N00°16'06"W (N00°16'00"W RECORD) 281.48 FEET; THENCE N89°45'46"E (N89°44'00"E RECORD) 30.00 FEET; THENCE S00°16'06"E (S00°16'00"E RECORD) 281.48 FEET; THENCE S89°45'46"W (S89°44'00"W RECORD) 30.00 FEET TO THE BEGINNING, AS DISCLOSED BY INSTRUMENT RECORDED AUGUST 29, 2001 AS ENTRY NO. 438138 IN BOOK 763 AT PAGES 806-809, OFFICIAL IRON COUNTY RECORDS.

ALSO, ALL OF THE EASEMENTS, RIGHTS, COVENANTS, RESTRICTIONS, AND REQUIREMENTS WHICH ARE APPURTENANCES OF AND/OR INTENDED TO BENEFIT THE PARCEL (I.E., PARCEL 1) IN QUESTION AND WHICH ARE CREATED OR PROVIDED FOR IN THAT CERTAIN "COVENANTS RECORDED IN IRON COUNTY, UTAH ON JULY 16, 1981 AS ENTRY NO. 228617 IN BOOK 278 AT PAGE 298, AS SAID INSTRUMENT AS HERETOFORE BEEN AMENDED BY THAT CERTAIN FIRST AMENDMENT THERETO RECORDED ON NOVEMBER 17, 1981 AS ENTRY NO. 231361 IN BOOK 284 AT PAGE 113 AND BY THAT CERTAIN SECOND AMENDMENT THERETO, DATED FEBRUARY 15, 1982, RECORDED ON MAY 12, 1982 AS ENTRY NO. 235091 IN BOOK 289 AT PAGE 932, OFFICIAL IRON COUNTY RECORDS.

PARCEL 3 (B-1152-0005-0000):

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 2, BLOCK 4, VALLEY VIEW SUBDIVISION, CEDAR CITY, UTAH; THENCE S45°36'54"W 114.11 FEET (S45°37'00"W 114.10 FEET RECORD) ALONG THE SOUTHEASTERLY LINE OF SAID LOT 2 TO A NON-TANGENT CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 382.50 FEET, A DISTANCE OF 21.41 FEET (21.40 FEET RECORD), THE CHORD OF WHICH BEARS N42°46'54"W (N42°47'00"W RECORD) 21.40 FEET, SAID CURVE HAS A DELTA ANGLE OF 03°12'24" (03°12'00" RECORD); THENCE N44°23'06"W (N44°23'00"W RECORD) 174.41 FEET (173.10 FEET RECORD) TO A POINT ON THE SOUTH EASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF HIGHWAY SR-130; THENCE N45°36'54"E (N45°37'00"E RECORD) 143.50 FEET ALONG SAID R.O.W.; THENCE S44°23'06"E (S44°23'00"E RECORD) 195.81 FEET ALONG THE CENTER LINE OF PINE STREET; THENCE S45°36'54"W (S45°37'00"W RECORD) 30.00 FEET TO THE POINT-OF-BEGINNING (P.O.B.) AND CONTAINS 28,102.43 SQ.FT.

PARCEL 4 (B-1135-0001-0000):

BEGINNING AT THE NORTHEAST CORNER OF W.H. LEIGH SUBDIVISION; SAID POINT ALSO BEING

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LOCATED ON THE SOUTHEASTERLY RIGHT-OF-WAY (R.O.W.) OF STATE ROUTE NO. 130 AT A POINT N00°16'06"W 697.71 FEET (N00°16'00"W 696.40 FEET RECORD) FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE MERIDIAN; THENCE ALONG THE SUBDIVISION BOUNDARY S00°16'06"E (S00°16'00"E RECORD) 222.13 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY R.O.W. OF FIR STREET; THENCE FOLLOWING SAID RIGHT OF WAY, NORTHWESTERLY AROUND THE ARC OF A CURVE TO THE LEFT, THE RADIUS POINT OF WHICH IS LOCATED 89°44'01" (S89°44'00"W RECORD) 229.10 FEET, A DISTANCE OF 176.40 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY R.O.W. OF STATE ROUTE 130 (SR 130); THENCE ALONG SAID R.O.W. N45°36'54"E (N45°37'00"E RECORD) 90.00 FEET TO THE POINT-OF-BEGINNING (P.O.B.) AND CONTAINS 0.12 ACRES

LESS AND EXCEPTING THEREFROM:

THAT PORTION CONVEYED TO CEDAR CITY CORPORATION, BY WARRANTY DEED RECORDED DECEMBER 14, 2011 AS ENTRY NO. 624308 IN BOOK 1228 AT PAGE 642 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT N00°16'06"W (N00°16'00"W RECORD) 517.37 FEET ALONG THE EAST BOUNDARY OF W.H. LEIGH SUBDIVISION AND S89°59'54"W (S90°00'00"W RECORD) 3.85 FEET FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE MERIDIAN; SAID POINT OF BEGINNING BEING A P.O.C. ON A 229.10 FOOT RADIUS CURVE; THENCE COUNTERCLOCKWISE ALONG ARC OF SAID CURVE AND EAST LINE OF FIR STREET 134.36 FEET THROUGH A CENTRAL ANGLE OF 33°36'07" (33°36'08" RECORD), CHORD BEARS N27°34'49"W (N27°34'56"W RECORD) TO THE SOUTHEASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF U.S. HIGHWAY 91 (MAIN STREET); THENCE N45°36'54"E (N45°37'00"E RECORD) 24.06 FEET ALONG SAID R.O.W. LINE TO THE P.C. OF A 15.00 FOOT RADIUS CURVE; THENCE COUNTERCLOCKWISE ALONG ARC OF SAID CURVE 22.67 FEET THROUGH A CENTRAL ANGLE OF 86°36'33", CHORD BEARS S02°18'43"W, TO THE P.R.C. OF A 238.60 FEET RADIUS CURVE; THENCE CLOCKWISE ALONG ARC OF SAID CURVE 27.12 FEET THROUGH A CENTRAL ANGLE OF 06°30'47", CHORD BEARS S37°44'10"E (S37°44'09"E RECORD) TO THE P.C.C. OF A 74.50 FOOT RADIUS CURVE; THENCE CLOCKWISE ALONG ARC OF SAID CURVE 20.21 FEET THROUGH A CENTRAL ANGLE OF 15°32'35", CHORD BEARS S26°42'29"E; THENCE S18°56'11"E 42.39 FEET (42.41 FEET RECORD); THENCE S09°14'53"E 34.58 FEET (S09°15'51"E 34.56 FEET) TO THE POINT-OF-BEGINNING (P.O.B.) AND CONTAINS 854.10 SQ.FT.

PARCEL 5 (B-1135-0003-0000 & B-1135-0079-0001):

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE¼NE¼) OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, SALT LAKE MERIDIAN; THENCE S00°13'51"E (S00°13'45"E RECORD) 100.00 FEET ALONG THE SECTION LINE; THENCE S89°41'54"W (S89°42'00"W RECORD) 258.70 FEET TO A POINT ON THE EASTERLY LINE OF FIR STREET; THENCE ALONG THE EASTERLY LINE OF FIR STREET AS FOLLOWS: THENCE N00°16'06"W (N00°16'00"W RECORD) 40.61 FEET TO A CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 168.00 FEET, A DISTANCE OF 134.54 FEET, DELTA ANGLE OF 45°43'04"; THENCE N45°36'54"E 247.00 FEET (N45°37'00"E 247.50 FEET RECORD); THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, A DISTANCE OF 80.07 FEET (80.08 FEET RECORD), DELTA ANGLE OF 45°52'43"; THENCE DEPARTING SAID FIR STREET, S00°16'06"E (S00°16'00"E RECORD) 304.80 FEET TO THE POINT-OF-BEGINNING

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(P.O.B.) AND CONTAINS 0.81 ACRES.

PARCEL 6:

BEGINNING AT THE MOST EASTERLY CORNER OF LOT 2, BLOCK 4, VALLEY VIEW SUBDIVISION, THENCE N45°36'54"E (N45°37'00"E RECORD) 30.00 FEET TO A POINT ON THE CENTERLINE OF PINE STREET; THENCE ALONG SAID CENTERLINE AS FOLLOWS: THENCE S44°23'06"E (S44°23'00"E RECORD) 36.90 FEET TO A CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 382.50 FEET, A DISTANCE OF 143.02 FEET (143.01 FEET RECORD), DELTA ANGLE OF 21°25'22"; THENCE DEPARTING SAID STREET CENTERLINE S00°07'06"E (S00°07'00"E RECORD) 148.49 FEET; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 352.50 FEET (NOTE: RADIUS POINT FOR SAID CURVE BEARS S89°52'57"W (S89°53'00"W RECORD)) A DISTANCE OF 272.33 FEET (272.34 FEET RECORD), DELTA ANGLE OF 41°15'55"; THENCE N44°23'06"W 36.90 FEET TO THE POINT-OF-BEGINNING (P.O.B.) AND CONTAINS 0.15 ACRES.

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