

When recorded, mail to:  
Bryan G. Petkanics, Esq.  
St. John & Wayne, LLC  
70 East 55th Street  
New York, NY 10022

Execution

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ALAN SPRIGGS, SUMMIT CO RECORDER  
2005 JUN 29 09:17 AM FEE \$73.00 BY GGB  
REQUEST: FOUNDERS TITLE CO

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

THIS DEED OF TRUST SECURES A TERM LOAN PROMISSORY NOTE DATED June 29, 2005 AND A REVOLVING PROMISSORY NOTE DATED June 29, 2005 IN ACCORDANCE WITH THE PROVISIONS OF A CERTAIN CREDIT AGREEMENT DATED June 29, 2005 BETWEEN TRUSTOR AND BENEFICIARY.

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

THIS **DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT** (this "*Deed of Trust*") is made as of the 29 day of June, 2005, among **PARK CITY WILDLIFE CONSERVANCY LAND TRUST, LLC**, a Delaware limited liability company, whose address is 2 South Main Street, 2<sup>nd</sup> Floor, Heber City, Utah 84032, as Trustor ("*Trustor*"), **FOUNDERS TITLE COMPANY**, a Utah corporation, Founders Title Company, 675 Ironhorse Drive, Suite F, Park City, Utah 84068 ("*Trustee*"), and **HSBC BANK USA, National Association** a national banking association, whose address is 452 Fifth Avenue, New York New York 10018, as Beneficiary ("*Beneficiary*").

WITNESSETH:

For the consideration of **TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00)** advanced or to be advanced by Beneficiary to or for the benefit of Trustor, Trustor hereby irrevocably conveys, transfers, pledges and assigns in trust to Trustee, with power of sale, and grants to Beneficiary a security interest in, all of Trustor's present and future right, title and interest in and to all of the following property (severally and collectively, the "*Property*"):

(a) All of that certain real property located in Summit County, Utah, and more particularly described on Exhibit "A" hereto (the "*Real Property*");

(b) All present and future tenements, hereditaments, easements, condominium plats, condominium declarations, condominium bylaws, rights, leases, guaranties of leases, subleases, licenses, benefits, privileges, permits, water, water rights, grandfathered water rights, irrigation rights, ditch rights, shares of stock in irrigation districts or evidencing water rights, contracts for effluent, all other contractual rights to water, rights of way, pipes, ditches, fences and appurtenances belonging or in any way appurtenant to, and all oil, gas and other hydrocarbons and other minerals produced from or underlying, the Real Property or any portion thereof, or any improvements or development thereon, and all reversions, remainders, rents, issues, and profits thereof;

(c) All buildings and improvements now or hereafter erected on the Real Property or any portion thereof, and all equipment, inventory and fixtures now or hereafter attached to or located on or used in connection with the Real Property;

(d) All of the beneficial interest of Trustor in any subdivision or holding trust, if title or any interest of Trustor in the Real Property is vested in or held by a trustee;

(e) All present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity or any other person relevant to the zoning, subdivision, division, development, improvement, use, lease, sale or other disposition of the Real Property or any portion thereof, or any buildings or improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(f) All present and future plans, specifications, drawings, analyses, surveys, reports and other design products, relating to all present and future buildings and tenant and other improvements (including landscaping) constructed on the Real Property or any portion thereof, and all rights in and to all architectural and engineering contracts, surety bonds, warranties, land use plans, studies, building contracts, soils reports, appraisals, feasibility and market studies, management agreements, operating agreements, service contracts, development contracts, design contracts, sign design contracts, space planning contracts and any other agreements with respect to planning, designing, developing, or inspecting construction on, the Real Property or any portion thereof and any buildings or improvements thereon, together with any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(g) All present and future water service and wastewater capacity reservation agreements and security agreements, and all other present and future contracts, agreements, books and records relating to the development, improvement, use, leasing, sale, disposition, operation and management of the Real Property or any portion thereof, all buildings and other improvements or personal property now or hereafter placed, erected or located on the Real Property, and any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(h) All present and future rights under or with respect to: (i) any declarations of restrictions governing or imposing rights or responsibilities on or with respect to any subdivisions, horizontal property regimes, condominiums, planned area developments, planned unit developments or master plans which are partially or wholly located on or affect the Real Property; (ii) any design review or architectural review committee and any property owners', condominium association, or similar association described in or created by the documents referred to in the foregoing clause (i), together with any voting rights therein; and (iii) any and all other documents and instruments and any amendments relating to the operation, organization, control or development of the Real Property;

(i) All adjacent streets (open or proposed), roads, sidewalks, alleys, public places, parking areas, and strips and gores of land now or hereafter appurtenant to or used or useful in connection with the Real Property or any portion thereof, or any buildings or other improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(j) All rights in and to any present or future contracts, agreements, commitments, options, revenues, deposits (including deposits with any public or private utility with respect to utility services furnished to the Real Property), refunds, credits, retentions, or other rights or considerations that in any way relate to or arise out of any development, use, improvement, sale or disposition of the Real Property or any portion thereof, or any buildings or other improvements or personal property now or hereafter erected, placed or located on the Real Property or any portion thereof, or any business now or hereafter conducted on the Real Property;

(k) All rights in and to all present and future agreements or commitments for the purpose of selling or otherwise disposing of any interest in the Real Property or any portion thereof, and any buildings and other improvements now or hereafter located on the Real Property or any portion thereof;

(l) All rights to the use of any trade name or trademark by which the Real Property or any portion thereof, or any improvements or development thereon, are known;

(m) All rights under any policy or policies of insurance (including premium refunds and credits and insurance proceeds) insuring against damage or loss with respect to any portion of the Property, including all fire, casualty, business interruption, rent loss and flood insurance, whether or not such insurance is required by this Deed of Trust or Beneficiary;

(n) All rights in and to any present and future deposit (general time or demand, provisional or final) or investment or other accounts (including all accounts held jointly with someone else) maintained with Beneficiary, or with another institution into which proceeds of the loan secured hereby have been deposited;

(o) All goods, materials, supplies, fixtures, machinery, furniture and furnishings, appliances, attachments, equipment, inventory, general intangibles, accounts, chattel paper, instruments, notes, drafts, letters of credit, documents and other personal property (to the extent that any of the foregoing constitute personal property under applicable law) that directly or indirectly relate to or are used or intended for use on or in connection with the use, leasing, development, design, construction and/or sale of the Real Property or any portion thereof, or any buildings or improvements located thereon or any easements, appurtenances, hereditaments or privileges appurtenant or incident thereto; and

(p) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards (or proceeds of any purchase in lieu thereof) which are or may become payable with respect thereto), and (iv) books, records and files relating to, all or any portion of the items described in the preceding paragraphs.

The foregoing descriptions of items constituting the Property shall be construed as cumulative and not limiting, and the term "including", when used in those descriptions, shall mean without limitation by reason of enumeration. Unless the context clearly indicates otherwise, the terms "equipment," "inventory," "accounts," "instruments," "chattel paper," "general intangibles," "proceeds" and "products" shall have the meanings provided for those terms in the Utah Uniform Commercial Code in effect on the date of this Deed of Trust.

This Deed of Trust is given in consideration of and as security for: (i) the payment of a loan by Beneficiary to Trustor evidenced by that Term Loan Promissory Note (the "*Term Note*") of dated June \_\_, 2005 executed by Trustor and payable to the order of Beneficiary for the principal amount of **\$8,000,000.00** as the consideration for this Deed of Trust, together with interest thereon and charges with respect thereto, that certain Credit Agreement dated June \_\_, 2005 by and between Trustor and Beneficiary (the "*Loan Agreement*") or this Deed of Trust, and any and all renewals, replacements, amendments, modifications or extensions of the Term Note, the Loan Agreement or this Deed of Trust; (ii) the payment of a loan by Beneficiary to Trustor evidenced by that Revolving Loan Promissory Note (the "*Revolving Note*", and together with the Term Note, the "*Note*") of dated June \_\_, 2005 executed by Trustor and payable to the order of Beneficiary for the principal amount up to **\$2,000,000.00** as the consideration for this Deed of Trust, together with interest thereon and charges with respect thereto, the Credit Agreement or this Deed of Trust, and any and all renewals, replacements, amendments, modifications or extensions of the Revolving Note, the Loan Agreement or this Deed of Trust; (iii) all of the terms, conditions, agreements, stipulations, covenants, and provisions of this Deed of Trust, the Loan Agreement and any other agreement, document or instrument (and any and all renewals, replacements, amendments, modifications or extensions thereof), and all other Loan Documents (defined in the Loan Agreement) except the Environmental Certification, given by Trustor to Beneficiary to evidence or to secure the indebtedness secured hereby; (iv) all late charges, default interest, prepayment charges or premiums, loan fees, commitment fees and extension fees described in the Note or the Loan Agreement and all costs of collecting the indebtedness or other amounts evidenced by the Note or described in this Deed of Trust or the Loan Agreement, including any and all costs and expenditures of a receiver in possession and reasonable attorneys' fees; (v) payment of all sums advanced by Beneficiary to protect the Property, with interest thereon equal to the Overdue Rate as provided by the Note; (vi) Trustor's compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Property is bound or may be affected; and (vii) all modifications, extensions and renewals of any of the obligations secured hereby, however

evidenced, including, without limitation: (a) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (b) modifications extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note. This Deed of Trust shall also secure the payment and performance of any additional loans that may hereafter be made by Beneficiary to Trustor which are evidenced by a promissory note or notes or other writings stating that they are secured by this Deed of Trust. This Deed of Trust shall also secure all amounts, including costs of collection, payable under any guarantee(s) now or hereafter relating to the obligations secured hereby. All of the foregoing payments and performances secured by this Deed of Trust are sometimes hereinafter referred to as the "Obligations."

**TRUSTOR, TO PROTECT THE PROPERTY AND SECURITY GIVEN BY THIS DEED OF TRUST, HEREBY WARRANTS, COVENANTS AND AGREES AS FOLLOWS:**

1. **Warranty of Title.** Trustor warrants that it is the sole owner of good and marketable unencumbered title to the Property, and Trustor will forever defend the same against all claims and persons whomsoever, unto Beneficiary, its successors and assigns, subject only to the matters approved by Beneficiary as acceptable exceptions to title pursuant to the provisions of the closing instruction letter delivered herewith to the title insurance company insuring the lien of this Deed of Trust. All of Trustor's present and future right, title and interest in the Property shall be subject to the lien and other terms and provisions of this Deed of Trust regardless of the time that any such right, title and interest is created, obtained by or conveyed, transferred or assigned to Trustor.

2. **Obligation to Maintain Property; Repairs; Inspection by Beneficiary.**

(a) Trustor shall care for and keep and maintain the Property in good order, condition and repair, and will at all times make such repairs, maintenance, renewals, and replacements as shall be necessary to maintain the Property and abutting grounds, sidewalks, roads, parking and landscape areas in good condition and repair, all to the same extent as a prudent owner would make. Trustor shall not substantially alter the Property, except for normal clearing, grading and construction activities, and as may be required by applicable laws (including the Americans With Disabilities Act (42 U.S.C. §§ 12101-12213 and 47 U.S.C. §§ 225 and 611)), ordinances, orders, decrees, rules, regulations or requirements of any governmental authority, including applicable subdivision laws, regulations and ordinances, and any requirements, terms or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, building codes, flood protection laws and ordinances, zoning ordinances or stipulations, subdivision plats, master plans, development plans, or other instruments or documents now or in the future affecting any portion of the Real Property or any improvements thereon (collectively, "*Legal Requirements*"). All replacements of items of the Property will be of a value equal to or greater than the value of the item or items replaced. Trustor shall not commit, or permit to occur, any waste upon the Property. Trustor shall keep the Property free of rubbish and unsightly, unsafe and unhealthful conditions.

(b) Trustor shall comply in all material respects with all Legal Requirements now or in the future affecting the Property or requiring any alteration or improvements to be made thereof. To Trustor's knowledge, the building plans and specifications for the improvements, to the extent such exist, on the Property comply with, and to the extent created, modified or developed in the future will comply with, all zoning and building laws, ordinances, codes, rules and regulations and other laws and regulations (as such may be amended or modified from time to time) applicable thereto and such plans and specifications and improvements have been, or will be, approved by all appropriate authorities. No notice of any violations of ordinances, codes, rules, regulations, orders, restrictive covenants or statutes applicable to the Property has been received, nor have any governmental authorities or insurance underwriters required any changes to any plans and specifications as submitted to Beneficiary. All appropriate governmental authorities will have issued, as and when required, all required permits for the construction of the improvements on the basis of the plans and specifications so approved. To the best of Trustor's knowledge, after due inquiry and investigation, the Property, any improvements thereon and their use fully comply and shall continue to comply with environmental, air quality, zoning, planning, building and other governmental laws, ordinances, rules, regulations and requirements (as such may be amended or modified from time to time) and Trustor has received no notice to the contrary.

Without Beneficiary's prior written consent, which consent with regard to (i) below shall be in Beneficiary's reasonable discretion, Trustor will not (i) initiate any zoning reclassification of the Property, (ii) seek any variance under existing zoning ordinances applicable to the Property, (iii) use or permit the use of the Property in a manner that would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws, rules or regulations, or (iv) impose any restrictive covenants upon the Property. As of the date hereof, no action or proceeding is pending before any court, quasi-judicial body or administrative agency relating thereto.

(c) In the event of any loss, damage or destruction to the Property, Trustor shall, to the extent that insurance proceeds are available for rebuilding under paragraph 3(b) below, or if an applicable Lease (defined in paragraph (7) below) requires rebuilding in the absence of available insurance proceeds, promptly and in a good and workmanlike manner repair, rebuild and restore such loss, damage or destruction to its original condition, pay when due all costs incurred, and keep the Property free from all claims, charges, claims of liens, or encumbrances for work performed or materials furnished, whether superior or subordinate to the lien of this Deed of Trust. Trustor may contest in good faith the validity or amount of any claim, charge, lien or encumbrance by appropriate proceedings provided by law, including payment of the claim, charge, lien or encumbrance under protest, if required, provided that: (i) Trustor promptly pays any sums found to be due upon a final determination of the contested claim, charge, lien or encumbrance; and (ii) prior to any such contest, Trustor shall furnish Beneficiary a cash deposit, bond or other security, in amount and form satisfactory to Beneficiary, to protect Beneficiary against the sale or forfeiture of, or creation of a lien against, the Property.

(d) Beneficiary shall have the right at its sole risk to enter upon the Property at any and all reasonable times and to inspect the same to ascertain whether Trustor is in compliance with the terms and provisions of this Deed of Trust.

### **3. Insurance.**

(a) Trustor shall keep all of the Property (except land, paving and roads) insured to 100% of its full insurable replacement cost value (including the cost of debris removal) against loss by fire and such other hazards, casualties, and contingencies as are customarily insured against by persons owning similar properties in the locality of the Property or customarily required by prudent institutional lenders making loans secured by such properties for such periods and in such amounts as Beneficiary may reasonably require from time to time. Trustor will pay all premiums for such insurance promptly when due and prior to delinquency. Hazards insured against shall include flood damage, in an amount equal to the lesser of the amount of the loan secured hereby or the maximum amount available under the Flood Disaster Protection Act of 1973 and regulations issued pursuant thereto, as amended from time to time, in form complying with the "insurance purchase requirement" of said Act, if the Real Property, or any part thereof, lies within a "special flood hazard area" as designated on maps prepared by the Department of Housing and Urban Development or Federal Emergency Management Agency. Trustor shall, at Trustor's expense, within thirty (30) days after request therefor, furnish Beneficiary with evidence of insurance coverage and insurable value reasonably acceptable to Beneficiary. In addition, Trustor agrees to provide comprehensive general liability coverage (including blanket contractual liability coverage insuring indemnity liability) in a combined single limit amount of not less than \$2,000,000.00 insuring against loss arising from or caused directly or indirectly by the condition, use or ownership of the Property and the abutting streets, sidewalks and passageways, in amounts and issued by companies reasonably approved by Beneficiary, which policies shall name Beneficiary as a loss payee subject to a standard form mortgagee clause.

During the course of any construction or repair of improvements on the Property, Trustor agrees to provide (i) general comprehensive liability and workers' compensation insurance for all employees of Trustor and any contractor engaged on or about the Property, and (ii) builder's all-risk insurance covering Trustor and any contractor against all risks of physical loss, including collapse and transit coverage, during construction of the improvements, with deductibles in amounts satisfactory to Beneficiary, covering the total value of work performed and equipment, supplies and materials furnished. All policies shall be written without any co-insurance clause and shall include a lender's loss payable endorsement or standard mortgagee clause, without contribution, in favor of and in form acceptable to Beneficiary. Should Beneficiary agree to the inclusion of a co-insurance or an average clause, the policy shall also include a stipulated value endorsement for such amount

as Beneficiary may require. All policies shall contain an endorsement or agreement by the insurer that (A) any loss shall be payable in accordance with the terms of the policy notwithstanding any act or negligence by Trustor which might otherwise result in forfeiture or cancellation of the policy, and (B) waiving all rights of setoff, counter-claim, deduction or subrogation against Trustor. Trustor waives any and all right to claim or recover against Beneficiary, its directors, officers, employees, agents and representatives for any loss or damage to Trustor, the Property, or any property of others under Trustor's control resulting from any cause insured against or required to be insured against under this paragraph (3). All policies shall be issued by companies reasonably approved by Beneficiary and having an A- or better rating from Alfred M. Best Company, Inc.; all policies and renewals thereof are hereby assigned to Beneficiary. All policies (or, at Beneficiary's election, evidence of satisfactory insurance coverage and copies of the policies) shall be delivered to and held by Beneficiary. All policies shall provide that they may not be canceled or materially amended (including any reduction in the scope or limits of coverage) without at least thirty (30) days' prior direct written notice to Beneficiary from the relevant insurance companies. All renewal policies shall be delivered to Beneficiary, premiums prepaid for a term of at least one year, at least fifteen (15) days before the expiration of the policies being renewed. Acceptance of policies tendered by Trustor shall not preclude Beneficiary from requiring other or additional insurance against the same or other hazards.

(b) Trustor will give immediate written notice to Beneficiary of any loss or claim, and Beneficiary may make proof of loss if not made promptly by Trustor. Each insurance company is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor or to Trustor and Beneficiary jointly. During any period in which an Event of Default has occurred and is continuing, insurance proceeds or any part thereof may be applied by Beneficiary, at its option, either to the reduction or payment of the Obligations or to the repair, rebuilding and restoration of the Property lost, damaged or destroyed. So long as no Event of Default has occurred and is continuing, Beneficiary shall, subject to the terms and conditions set forth in this subparagraph (b), apply insurance proceeds to the repair, reconstruction, or restoration of the Property. In no event, however, shall Beneficiary be obligated to ensure the proper application of any amount paid over to Trustor. Irrespective of the dollar amount of the loss or claim, Trustor shall provide Beneficiary with sufficient documentation and information necessary or required by Beneficiary to verify and confirm the exact nature and extent of the damage or destruction to the Property and the amount of funds required to repair or rebuild the Property, together with a budget (which shall be subject to Beneficiary's reasonable approval) describing the repair or restoration work to be performed and the costs of labor and material for each stage of repair or restoration work. In the event that proceeds are used for the repair, rebuilding and restoration of the Property, insurance proceeds shall be placed in a segregated account with Beneficiary and used for the repair, rebuilding and restoration of the insured loss, through such procedures and with such safeguards for release of such proceeds and payment of construction and related expenses as Beneficiary customarily imposes for advances of construction loan funds, which may include requirements that: (i) Trustor first expend or deposit into the escrow account any difference between the total cost of repair, rebuilding and restoration and the amount of such proceeds; (ii) Trustor, at its expense, promptly prepare and submit to Beneficiary all plans and specifications necessary for the restoration and repair of the damaged Property, together with evidence reasonably acceptable to Beneficiary setting forth the total expenditure needed for the restoration and repair based upon a fixed price contract with a reputable builder; (iii) the plans and specifications and all other aspects of the proposed restoration and repair be subject to Beneficiary's approval in the exercise of its reasonable discretion; (iv) Trustor commence restoration and repair of the damaged Property only after Beneficiary shall have notified Trustor in writing that the use of proceeds for restoration and repair is allowable under this paragraph (3), that the required safeguards, procedures and assignments described in this paragraph (3) are in place and that the plans and specifications and all other aspects of the proposed restoration have been approved by Beneficiary in its reasonable discretion, and Trustor shall thereafter proceed diligently with the restoration and repair until completed; (v) disbursements be made from the escrow account for the restoration and repair in accordance with a disbursement schedule; and (vi) all funds held in the escrow account be assigned to Beneficiary as further security for the Obligations. Any insurance proceeds not used for repair or restoration of the Property shall be applied to the last maturing installment of principal due and owing under the Note. The Property as rebuilt or restored shall be of at least equal value and substantially identical character as prior to the damage or destruction.

(c) Upon (i) Beneficiary's receipt of a trustee's deed or sheriff's deed to any portion of the Real Property, (ii) the taking by Beneficiary (or a receiver) of possession of the Property, or (iii) a conveyance in lieu of foreclosure, all right, title and interest of Trustor in and to any property damage and casualty insurance policies then in force, including any right to unearned premiums, shall inure to the benefit of and pass to Beneficiary (or the receiver, as appropriate) and, upon sale, to the purchaser of the Property. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns as its duly constituted attorneys-in-fact, with full power of substitution, to transfer and assign such policies upon the occurrence of any of such events.

**4. Payment of Taxes, Assessments and Other Liens or Charges.** At least five business (5) days prior to delinquency, Trustor shall pay or cause to be paid to the proper officials or persons all taxes and assessments, general or special, of every nature and description (including assessments, dues, use fees and charges for water) that shall have been levied or assessed on the Property and, upon Beneficiary's request, shall deliver to Beneficiary receipts evidencing such payments. If the Real Property or any lot or parcel thereof is part of a larger tax or assessment parcel, Trustor shall, as soon after recordation of this Deed of Trust as is reasonably possible, cause the tax or assessment parcel to be split or amended so that its boundaries correspond to the boundaries of the Real Property and its lots or parcels. Trustor may contest in good faith the validity or amount of any tax, assessment or governmental charge by appropriate proceedings provided by law, including payment of the tax, assessment or charge under protest, if required, provided that: (a) Trustor promptly pays any sums found to be due upon a final determination of the contested tax, assessment or governmental charge; and (b) prior to any such contest, Trustor shall furnish Beneficiary a cash deposit, bond or other security, in amount and form satisfactory to Beneficiary, to protect Beneficiary against the sale or forfeiture of, or creation of a lien against, the Property. Trustor shall not consent to, or vote in favor of, the inclusion of any portion of the Real Property in a special improvement, assessment, community facilities or similar district without Beneficiary's reasonable prior written consent. Trustor shall provide Beneficiary with prompt notice of any notification that Trustor may receive from any governmental authority or other person of any intent or proposal to form such a district that may include any portion of the Real Property, and Beneficiary shall have the right to object to the same, and to otherwise appear and participate in hearings and other proceedings, in its own name or in Trustor's name. Trustor shall pay or cause to be paid when due all charges for water, water delivery, gas, electric power and light, telephone, sewer, waste removal, bills for repairs, and all other claims, encumbrances and expenses incident to the ownership and occupancy of the Property.

**5. Impounds.**

(a) At any time requested by Beneficiary, Trustor shall deposit with Beneficiary, in monthly installments, sufficient funds (as determined by Beneficiary) to enable Beneficiary to pay one month before delinquency all taxes, assessments and insurance premiums due with respect to the Property. Each such installment shall be equal to the amount of estimated taxes and assessments, and premiums for such insurance, next due (as estimated by Beneficiary), less all installments already paid therefor, divided by the number of months that will elapse before one month prior to the date when such taxes and assessments or premiums shall become delinquent. If amounts paid to Beneficiary under provisions of this paragraph (5) are insufficient to discharge the obligation of Trustor for such taxes, assessments or premiums as the same become due, Trustor shall pay to Beneficiary upon demand such additional sums as may be required to fully pay and discharge those items.

(b) To the extent deposits are received by Beneficiary and used to pay taxes, assessments and premiums pursuant to this paragraph (5), such payments shall satisfy Trustor's obligations to pay such taxes, assessments and premiums pursuant to paragraphs (3) and (4) hereof. Any excess funds remaining after payment of all items before delinquency may be remitted to Trustor, or, if an Event of Default then exists, credited on the Obligations.

Nothing in this paragraph (5) shall release Trustor from, or shift to Beneficiary, the obligation to pay taxes, assessments and insurance premiums as the same become due and payable, or be construed to cause Beneficiary to become a trustee of amounts deposited with Beneficiary. Deposits made under this paragraph (5) may be commingled with Beneficiary's general corporate funds, and Beneficiary shall hold those deposits without the payment of interest. All amounts paid and deposited hereunder are hereby assigned to Beneficiary as additional security for the Obligations. If any Event of Default occurs, Beneficiary may, at its sole option, apply all or any portion of such deposits to the cure or partial cure of the

Event of Default without waiver of or prejudice to the rights of Beneficiary arising by virtue of such Event of Default, or to the payment of principal and interest on the Obligations, in lieu of applying such deposits for any other purposes.

6. **Eminent Domain.** Any award or payment of damages or compensation in connection with any private trespass or injury to the Property, exercise of the right of eminent domain or any condemnation proceeding for public use of or injury to the Property or any part thereof, or any right or interest therein, is hereby assigned and payable to Beneficiary, which may apply or release all or any portion of such award, compensation or damages received by it (net of the costs and expenses incurred by Beneficiary in collecting such amounts) in the same manner, upon the same conditions and with the same effect as provided in paragraph 3(b) of this Deed of Trust for the disposition of proceeds of fire or other insurance, as if references in paragraph 3(b) above to insurance proceeds instead referred to condemnation awards (or amounts paid in lieu thereof) and references to damage and casualty loss instead referred to the taking by condemnation or power of eminent domain (or conveyance in lieu thereof); provided that: (a) any award or compensation attributable to land or to improvements that will *not* be reconstructed shall be applied to the Obligations; and (b) if any condemnation or taking renders the remaining portions of the Property unsuitable, in the judgment of an independent architect reasonably acceptable to Beneficiary and engaged by Trustor, for further development in accordance with the plans and specifications submitted to and approved by Beneficiary as described in paragraph 3(b) above, the entire award or compensation shall be applied to the Obligations. Beneficiary shall be entitled to join and participate in any eminent domain or condemnation proceedings, including the negotiation and adjudication of any damages, award or settlement, and no stipulation or agreement shall be entered into by Trustor without the prior consent and approval of Beneficiary. Trustor shall pay or reimburse to Beneficiary the legal expenses, appraisal and expert witness fees incurred by Beneficiary and any other direct and out-of-pocket costs incurred by Beneficiary because of such eminent domain and condemnation proceedings. If a cash bond or deposit is to be received by Trustor for the immediate possession of the Property, all sums paid shall be applied by Trustor to the Obligations, unless otherwise agreed by Beneficiary. Notwithstanding any application of sums paid, only Trustor shall be the withdrawing party of sums paid for the purpose of determining any liability for return of any such cash bond or deposit, and Trustor shall promptly satisfy any claim with respect to any such liability and shall save and hold Beneficiary harmless from any claim for return of such cash bond or deposit, including any claim asserted after the release and reconveyance of this Deed of Trust. Any condemnation proceeds not used for repair or restoration of the Property shall be applied to the last maturing installment of principal due and owing under the Note.

7. **Assignment of Rents, Profits and Leases.**

(a) Trustor represents and warrants to Beneficiary (and to any title insurance company which insures the lien of this Deed of Trust) that, as of the time of recordation of this Deed of Trust, no recorded or unrecorded lease or rental agreement exists that affects any portion of the Property, with the exception of an oral grazing lease that is revocable by Trustor in its sole discretion at any time.

(b) All existing and future rents, revenues, income, receipts, issues and profits of the Property and now or hereafter arising out of any Leases (hereinafter defined) (collectively, "*Rents*") and the entire right, title and interest of Trustor (including the right to exercise any landlord's liens and any and all other rights and remedies to which Trustor would be entitled under any Lease or by law) in and under all present and future rental agreements, leases, subleases, licenses and all other agreements for the use and occupancy of all or any portion of the Property (including rights in any security deposits and advance rentals held for the benefit of Trustor), including those described in subparagraph (a) above, together with any extensions, renewals and modifications thereof (collectively, "*Leases*"), are hereby absolutely assigned and transferred to Beneficiary. Beneficiary is authorized to give notice of this assignment, and Trustor agrees to execute, and to cause its property managers and affiliates to execute, any and all further instruments that Beneficiary may require to perfect this assignment. Any provision hereof notwithstanding, so long as no Event of Default exists, Trustor shall have a license to collect assigned Rents as the same shall fall due. However, upon the occurrence of any Event of Default, all right of Trustor to collect or receive such Rents (including those past due and unpaid) shall terminate, whereupon Beneficiary shall be entitled to demand and receive the payment of such Rents (including those past due and unpaid), and to proceed against any lessee or tenant (or its property) and/or any guarantors of the obligations of any lessee or tenant. In such event, Trustor directs and authorizes the lessees and tenants of the Property and any guarantors to make to Beneficiary all payments required under the applicable Leases;



Trustor hereby relieves any and all lessees and tenants from any liability to Trustor that Trustor might otherwise assert by reason of the lessee/tenant's making such payment to Beneficiary. All Rents collected by Beneficiary may be applied for the following purposes in any manner and order that Beneficiary deems advisable:

- (i) To the payment of all taxes and assessments levied against the Property if provision for paying those items has not otherwise been made;
- (ii) To the payment of construction and development and current operating costs and expenses (including management fees, sales taxes, repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Property;
- (iii) To the payment of any amounts due and owing to Beneficiary under the terms of the Obligations;
- (iv) To the payment of any lease payments under any ground lease or amounts secured by any other mortgage or deed of trust on the Property approved by Beneficiary; and
- (v) Any remainder to Trustor or its designee or other assignee.

Receipt by Beneficiary of Rents shall not constitute a waiver of any other right that Beneficiary may have under this Deed of Trust or the laws of Utah, nor shall the receipt and application thereof cure any Event of Default or affect any foreclosure proceeding or any sale authorized by this Deed of Trust or the laws of Utah.

(c) Except as expressly permitted by this Deed of Trust, Trustor shall not, without Beneficiary' prior written consent: (i) assign any of the Rents; (ii) collect any unreasonably large security deposits or any rent for more than one month in advance; (iii) change the general nature of the occupancy; (iv) initiate or acquiesce in any zoning reclassification; (v) terminate or accept a surrender of any Lease (except in the ordinary course of business in the exercise of Trustor' sound business judgment); (vi) amend or modify any Lease to reduce (or effectively reduce by means of rent concessions, rent-free occupancy periods or the granting of tenant improvement allowances) the rent, or to grant any options to purchase or renew or any rights of first refusal; (vii) subordinate, or permit the subordination of, any Lease to the lien of a mortgage or deed of trust that is junior to this Deed of Trust; or (viii) take, fail to take or suffer any action that would impair the security for the Obligations or Beneficiary' interest in the Property or the Rents. Any action taken in violation of the foregoing sentence shall be null and void. Trustor shall fully and timely perform all of the obligations of the landlord under all Leases of any portion of the Property and shall enforce, short of termination, the performance by all lessees and tenants of all of their obligations under the Leases.

(d) Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease, and Trustor hereby agrees to indemnify and hold Beneficiary harmless from any and all liability arising from any of the Leases or from the assignment contained in this paragraph 7. Unless Beneficiary exercises its rights pursuant to paragraph 18 and, as a result, applicable law imposes such an obligation upon Beneficiary, this paragraph 7 shall not obligate Beneficiary to manage, care for or repair the Property or make Beneficiary liable for any loss or damage to any tenant, invitee, employee, licensee or any other person resulting from the failure to properly manage, care for or repair the Property.

(e) In the event that Beneficiary exercises its rights to possess and exclude Trustor from the Property pursuant to paragraph 18 of this Deed of Trust, Beneficiary shall have full power and authority to employ such measures as it may deem necessary or advisable, in its sole discretion, to enforce the payment or security of the Rents, including actions for the recovery of rent, actions in forcible detainer and in distress for rent, and with full power: (i) to cancel or terminate any Lease for any reason that would entitle Trustor to cancel or terminate the same (including the oral grazing lease affecting the Property, which is revocable by Trustor in its discretion at any time); (ii) to disaffirm any Lease which is subordinate to the lien of this Deed of Trust (except such Leases that are subordinate pursuant to a Subordination, Non-Disturbance and Attornment

Agreement, as described in paragraph 24 hereof); (iii) to extend or modify any then existing Lease and to enter into new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of issuance of a deed(s) to a purchaser(s) at a judicial or nonjudicial foreclosure sale, Trustor agreeing that any such Leases, and the options or other such provisions contained therein, shall be binding upon Trustor and all persons whose interests in the Property are subject to the lien of this Deed of Trust and upon the purchaser(s) at any foreclosure sale, notwithstanding any redemption, discharge or satisfaction of the Obligations or any judgment in foreclosure rendered thereon, or issuance of any certificate of sale or deed to any purchaser(s); (iv) to undertake and complete all repairs, decorating, renewals, replacements, alterations, additions and improvements to the Property as Beneficiary may deem necessary or advisable; (v) to insure the Property and all risks incidental to Beneficiary's possession, operation and management thereof; and (vi) to receive all of the Rents.

**8. Security Agreement.**

(a) Creation of Security Interest. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah Uniform Commercial Code (the "UCC"). With respect to personal property comprising the Property ("*Personal Property*"), whether now owned or existing or hereafter acquired or arising, wherever located and whether in Trustor's possession and control or in the possession and control of a third party, Beneficiary is granted a security interest hereunder, and shall be entitled to all the rights and remedies of a "secured party" under the UCC.

(b) Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

(1) The Personal Property is not used or bought for personal, family or household purposes.

(2) The tangible portion of the Personal Property will be kept on or at the Real Property or any improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of greater value.

(3) At the request of Beneficiary, Trustor hereby authorizes Beneficiary to prepare and file one or more financing statements and fixture filings pursuant to the UCC in a form satisfactory to Beneficiary and Trustor agrees to pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

(4) Trustor is a limited liability company organized under the laws of the State of Utah. Until the Obligations have been fully paid and performed, Trustor shall not change the state of its organization from the state of Utah without at least thirty (30) days prior written notice to Lender. Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of the adoption or change of any trade name or fictitious business name, and will upon request of Beneficiary, execute any additional financing statements or other certificates necessary to reflect the adoption or change in trade name or fictitious business name.

(5) Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

(6) The grant of a security interest to Beneficiary by this Deed of Trust shall not be construed to derogate from or impair the lien or provisions of, or the rights of Beneficiary under, this Deed of Trust with respect to any property described herein which is real property, or which the parties have agreed to treat as real property.

(c) Use of Personal Property by Trustor. Until the occurrence of an Event of Default hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

(d) Remedies Upon an Event of Default.

(1) In addition to the remedies provided herein, upon the occurrence of an Event of Default hereunder, Beneficiary shall have all of the rights and remedies of a Secured Party under the UCC, and Beneficiary may, at its option, do any one or more of the following:

(A) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(B) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any lien or encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(C) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and deliver promptly such Personal Property to Beneficiary, or an agent or representative designated by Beneficiary. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's Property to exercise Beneficiary's rights hereunder;

(D) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(E) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Property;

(F) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(G) Exercise any other remedies of a secured party under the UCC, the other Loan Documents or any other applicable law.

(2) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in Section 33.

(3) The proceeds of any sale under Section 8(d) shall be applied as follows:

(A) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all impositions, liens and encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any impositions or liens and encumbrances subject to which such sale shall have been made);

(B) To the payment of the Obligations in such order as Beneficiary shall determine; and

(C) The surplus, if any, shall be paid to the Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

**9. Uniform Commercial Code Filings.**

(a) The filing of one or more financing statements in the records relating to personal property shall in no way derogate or impair Beneficiary's priority or rights on default to exercise either its rights and remedies as a Beneficiary of this Deed of Trust or as a secured party with respect to personal property under the UCC in connection with the items of the Property covered by the UCC. This Deed of Trust is intended to and shall create a security interest in favor of Beneficiary in those items of the Property which are covered by the UCC, although such items are to be considered fixtures to the fullest extent permitted by law.

(b) In the event Beneficiary proceeds under the UCC against any personal property encumbered by this Deed of Trust, unless the Property is perishable or threatens to decline speedily in value, ten (10) days' notice to Trustor or any other "debtor" described in the UCC shall constitute commercially reasonable notice. Beneficiary shall also be entitled to proceed as to both the Real Property and all personal or mixed Property and all fixtures in accordance with Beneficiary's rights and remedies with respect to the Real Property as provided by the Utah Code Annotated.

(c) This Deed of Trust constitutes a security agreement and a financing statement (fixture filing) and it is hereby recited (to the extent that such recitation is required by the Utah Code Annotated because any portion of the Property may constitute fixtures) that this Deed of Trust is to be filed in the office where a

mortgage on the Real Property would be recorded, which is the office of the Recorder of Summit County, Utah. Trustor is the record owner of the Real Property. A carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall also be sufficient for filing and/or recording as a financing statement. Certain UCC financing statement information is set forth in Exhibit B to this Deed of Trust.

(d) Trustor represents and warrants to Beneficiary that no effective financing statements will be on file in the Utah Department of Commerce, Division of Corporations and Commercial Code, in the office of any secretary of state, county recorder or other public office in favor of a secured party other than Beneficiary naming Trustor as debtor and describing any of the Property as collateral, and there shall be no other financing statements filed without the prior written consent of Beneficiary.

(e) Trustor represents and warrants to Beneficiary that Trustor is a limited liability company organized under the laws of the State of Utah, and, unless Trustor provides thirty (30) days prior written notice to Beneficiary, Trustor shall continue to be so organized so long as any portion of the Obligations remains unpaid or unperformed.

(f) Trustor irrevocably authorizes Beneficiary to prepare and file, in accordance with the UCC, financing statements, or such other documents as may be required from time to time to create, maintain and perfect the liens and security interests granted herein. For purposes of complying with the UCC, Trustor acknowledges that the address for Trustor appearing in the introductory paragraph hereto is the chief executive office of Trustor. Trustor further acknowledges that it is a limited liability company organized and existing under the laws of the State of Utah as described in the introductory paragraph hereto. Trustor covenants and agrees that it will not make any change to its legal name, which legal name as shown in the introductory paragraph hereto is true and correct, its state of formation, organization or registration, or the location of its chief executive office or principal place of business, or its organizational structure or governing documents, without the prior written consent of Beneficiary in its reasonable discretion. Trustor further irrevocably authorizes Beneficiary at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (A) indicate the Collateral (1) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code or such jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (B) contain any other information required by *Part 5 of Article 9* of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether Trustor is an organization, the type of organization and any organization identification number issued to such Trustor, and (2) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Agent to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(g) Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to such Trustor's rights under the UCC.

(h) Trustor hereby represents and warrants to Beneficiary that it operates, and intends in the future to operate, the Property under no trade name other than Trustor's name set forth in the first paragraph of this Deed of Trust. Trustor shall immediately notify Beneficiary in writing of any change in, or additions to, said trade name(s) and shall, at Beneficiary's request, execute such additional financing statements as Beneficiary may request to reflect the change in, or addition to, trade name(s).

(i) Upon the occurrence of any Event of Default, in addition to any other remedies available under the Loan Documents or applicable law: (i) Beneficiary may enter upon the Real Property to take possession of, assemble and collect any or all personal property collateral or to render it unusable, as provided

in paragraph (8); and (ii) Beneficiary may require Trustor to assemble such collateral and make it available at a place designated by Beneficiary which is mutually convenient to allow Beneficiary to take possession or dispose of such collateral.

**10. Replacement or Addition of Fixtures or Personal Property Subject to Encumbrance.** Trustor shall provide written notice to, and obtain the consent of, Beneficiary prior to replacing, adding or installing any fixture or personal property constituting (or that will thereafter constitute) a portion of the Property if such fixture or personal property is or may be subject to a security interest held by a seller or any other party under the UCC. Trustor's failure to give notice shall constitute a material breach of this Deed of Trust and an Event of Default. In the event any such fixture or personal property is subject to a security interest held by a seller or other party, whether or not Trustor shall have given to Beneficiary the notice described above, Beneficiary may, at its option, at any time, pay the balance due to satisfy such security interest, and the amount so paid, together with any hazard insurance premiums paid by Beneficiary with respect to that property, shall be a lien on the Property, shall be added to the Obligations and shall be payable on demand, together with interest from the date of advance until paid at the then effective Overdue Rate (defined in the Note). Beneficiary shall have the right to acquire by assignment from the holder of any such security interest any and all contract rights, accounts, chattel paper, negotiable instruments, or other evidence of Trustor's indebtedness for such fixture or personal property and, upon acquiring any such interest by assignment, Beneficiary shall have the right to enforce the security interest as assignee thereof in accordance with the laws of Utah. Whether or not Trustor gives notice as described above, and whether or not Beneficiary pays or takes an assignment of any such security interest, Trustor shall pay prior to delinquency, and shall not permit any default to occur in the payment of, any moneys due under the security agreement covering such fixture or personal property, and any such nonpayment or default shall constitute an Event of Default. Should the lien and security interest of this Deed of Trust be subject to a prior security interest with respect to any of the Property, all of Trustor's right, title and interest in and to any deposits made in connection with the transaction creating the prior security interest (such as lease deposits) are hereby assigned to Beneficiary, together with the rights and benefits previously or hereafter obtained by reason of any payments made with respect thereto. As used in this paragraph (10), the term "security interest" shall include a lease.

**11. Actions or Proceedings Affecting Property; Duty to Appear.** Trustor agrees to appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security, rights or powers of Beneficiary hereunder or that seeks to impose liability on Trustee or Beneficiary because of any act or omission of Trustor, and Trustor shall pay all costs and expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the security or priority hereof or the rights or powers of Beneficiary. Beneficiary may, if Beneficiary reasonably determines that Trustor is failing or will fail to do so, pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien which, in the judgment of Beneficiary, appears to be prior or superior to the lien of this Deed of Trust. All amounts paid, suffered or incurred by Beneficiary in exercising the authority granted in this Deed of Trust, including reasonable attorneys' fees, shall be added to the Obligations, shall be a lien on the Property and shall be due and payable by Trustor to Beneficiary on demand, together with interest from the date of advance until paid at the then effective Overdue Rate.

**12. Additional Documents.** Trustor agrees to execute and deliver to Beneficiary, upon demand, any additional agreements, instruments or documents that Beneficiary deems reasonably necessary on a conservative basis to secure to Beneficiary any right or interest granted or intended to be granted to Beneficiary under this Deed of Trust. In the event any rights, easements or other hereditaments shall hereafter become appurtenant to any part of the Property, they shall become subject to the lien of this Deed of Trust.

**13. Sale, Lease or Conveyance by Trustor.**

(a) Trustor shall not sell, convey or further encumber (including granting any easements (except for public utility or other easements needed to service the improvements being constructed on the Real Property) or other interests affecting title to the Property) or pledge or hypothecate or in any manner dispose of any of its interest in all or any portion of the Property, voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole and exclusive discretion. Trustor shall not permit any sale, transfer, conveyance, pledge or hypothecation of any of the membership

interests of Trustor, voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole and exclusive discretion. Beneficiary may require as a condition of its consent a change in the terms and conditions of repayment of the Obligations, including payment of a fee, an increase in interest rate payable and/or a reduction in the time remaining prior to the maturity date. For the purposes of this paragraph (13), any change in the control or management of Trustor, transfer or encumbrance of any ownership or voting interests in Trustor or any transfer or assignment of all or substantially all of the assets of Trustor or any member of Trustor shall be deemed a transfer of the Property which gives the Beneficiary the right to exercise the remedies set forth herein. Nothing in this subparagraph (a) to the contrary shall apply in the following situations: (i) Trustor shall be entitled to replat the Property (e.g., change the density of lots on the Property), with Beneficiary's reasonable, advance written approval; in particular, Beneficiary shall have fifteen (15) days following its receipt of a request by Trustor to replat the Property within which to approve or disapprove the request; if Beneficiary fails, within the fifteen (15) day period, to approve or disapprove of Trustor's request to replat the Property, its approval shall be deemed granted; and (ii) Trustor may from time to time sell, exchange for other real property, dedicate as open space, or subject to a conservation easement certain lots within the Property so long as Trustor complies with all applicable provisions contained in Section 4.(b) of the Loan Agreement, including without limitation those requiring Beneficiary's prior written approval (if applicable) and the payment to Beneficiary of amounts as provided therein.

(b) Trustor shall give Beneficiary ten (10) business days' prior written notice of any proposed transaction which requires Beneficiary's consent, and Trustor shall furnish to Beneficiary such information as Beneficiary may reasonably require. Beneficiary may require, as a condition of its consent to any transfer or conveyance of the Property or any portion thereof, that: (i) any person succeeding to an ownership interest in the Property or any portion thereof assume personal liability for the payment and performance of the Obligations; (ii) Trustor confirm its continuing obligation and liability for the payment and performance of the Obligations; (iii) Trustor shall have obtained and provided to Beneficiary evidence of the consent of all guarantors of the payment of the Obligations or any portion thereof or the completion of the improvements to be constructed or any portion thereof to the transfer and their acknowledgment that the transfer will not in any manner impair the validity or effectiveness of their respective guaranties; (iv) Trustor provide to Beneficiary such documentation, title insurance endorsements, opinions of counsel and other items as Beneficiary may determine are reasonably required or prudent to assure that Beneficiary's rights under Beneficiary's loan documents are maintained in full force and effect and are not impaired; (v) Trustor execute such financing statements and other documents as Beneficiary may require in its conservative discretion in order to continue the perfected status of its security interests with respect to the Property; (vi) Trustor or the transferee reimburse Beneficiary for its reasonable legal expenses in connection with the consideration and documentation of the transfer and assumption; and (vii) no Event of Default shall then exist. Consent to any one transaction shall not release Trustor from personal liability for the Obligations or be deemed to constitute consent to any other transaction, and shall in no way obligate Beneficiary to subordinate the lien of this Deed of Trust to any interest created by such sale, transfer, lease, assignment, conveyance, encumbrance or other disposition.

(c) If the ownership of the Property or any portion thereof becomes vested in any person other than Trustor, Beneficiary may deal with such successor(s) in interest with reference to the Obligations and this Deed of Trust in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for payment of the Obligations. However, the foregoing sentence shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof.

**14. Changes or Modification of Applicable Tax Laws.** In the event of the imposition after the date of this Deed of Trust of any law of the United States of America, the State of Utah, or any other domestic or foreign governmental authority claiming to have jurisdiction, deducting from the value of real property for the purposes of taxation or assessment any lien thereon or changing in any way the taxation of mortgages, deeds of trust or of debts secured by mortgages or deeds of trust or the manner of the collection of any such taxes, and imposing a tax or assessment, either directly or indirectly on this Deed of Trust or the Note, the sums evidenced or secured thereby or the interest payable thereon, Trustor shall pay the entire tax or assessment in addition to all other payments required

hereunder and shall pay any such tax or assessment thereafter levied or assessed against the Real Property. The provisions of this paragraph 14 shall not apply to changes in federal and state income tax laws.

**15. Estoppel Certificate/Record Inspection.**

(a) Trustor, within ten (10) business days after written request by Beneficiary, will furnish to Beneficiary a written statement, duly acknowledged, of the amount of the Obligations and whether any offsets or defenses exist against the Obligations and such other matters as Beneficiary may reasonably request.

(b) Trustor will permit Beneficiary or its representatives from time to time to examine within the county in which the Real Property is located all books and records and agreements of Trustor pertaining to any portion of the Property.

**16. Substitute Performance.** Should Trustor fail to pay or perform any portion of the Obligations, then Beneficiary, without obligation to do so and without releasing Trustor from any portion of the Obligations, upon five (5) days' prior written notice (or such shorter period as is reasonably practicable under the circumstances) to Trustor, may pay or perform the same in such manner and to such extent as Beneficiary, in its sole good faith discretion, may deem necessary on a conservative basis to protect the security hereof. Beneficiary shall be authorized to enter upon the Property for such purposes. All expenses or charges that Beneficiary may incur in connection with the care or preservation of the Property or any part thereof at any time, or the payment of any taxes, assessments, insurance premiums, or encumbrances levied upon or attaching to the Property or any portion thereof or interest therein, or any cost of redemption thereon, or any sums of money, charges, expenses or fees which Beneficiary may pay pursuant to any provision hereof or of the Loan Agreement, shall be added to the Obligations, shall be payable by Trustor on demand, and shall bear interest at the then effective Overdue Rate from the date of advance until paid.

**17. Events of Default; Acceleration; Remedies.** Subject only to the applicable notice and cure provisions set forth in paragraph 9 of the Loan Agreement, upon the occurrence of any Event of Default (defined in the Loan Agreement), and at any time thereafter while such Event of Default is continuing, Beneficiary may declare the Obligations to be immediately due and payable pursuant to the provisions of the Loan Agreement, and Beneficiary may exercise any one or more of the rights and remedies described herein and in the other Loan Documents.

**18. Beneficiary's Right to Possession.** Following the occurrence of an Event of Default, then Beneficiary shall, at its option, be entitled to the immediate possession of the Property, with the right to manage the same as a mortgagee in possession, to operate any business thereon at the expense of and for the account of Trustor, and to collect and apply the Rents as described in paragraph 7 hereof. Trustor and all persons claiming under Trustor shall, upon demand, immediately deliver possession of the Property to Beneficiary or its assigns. Beneficiary shall not be liable to Trustor for any obligation or charge in dealing with the Property as a mortgagee in possession (other than for loss caused by Beneficiary's gross negligence or willful misconduct or that of Beneficiary's employees, agents and representatives). Nothing in this paragraph 18 shall impose upon Beneficiary: (a) any duty, obligation or responsibility for the control, care, management or repair of the Property, or for complying with or enforcing any of the terms and conditions of any lease agreement; or (b) any responsibility or liability for any waste committed on the Property by the tenants or by any other persons, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to any tenant, licensee, employee or other person.

**19. Appointment of a Receiver.** Following the occurrence of an Event of Default, a receiver may be appointed, with or without notice, whereupon the receiver shall immediately be entitled to possession of all of the Property. Beneficiary's right to a receiver shall be absolute and unconditional. The receiver may be appointed without regard to the adequacy of any security for the Obligations and Trustor shall immediately surrender possession of the Property to the receiver upon his appointment. The receiver shall have the right to take possession of the Property, to collect the Rents therefrom, to complete the construction of any structures or improvements in progress thereon, to rent the Property or any part thereof, to operate any business thereon, and to exercise such other rights as may be granted by the court pending such proceedings, and up to the time of redemption or issuance of a Trustee's or Sheriff's Deed. Rents shall be applied to the costs and expenses of the receiver and the receivership, including costs of construction, and the



balance shall be applied in the manner described in paragraph 7 hereof. The receiver shall have the power to borrow money from any person, including Beneficiary, for expenses of operating, preserving, maintaining and caring for the Property, and completing the construction in progress of any improvements or structures upon the Property, and all such borrowed sums, together with interest thereon, whether expended or not, shall be added to the Obligations. The receiver may expend such borrowed money for the purposes described in this paragraph 19 during any redemption period and, upon any redemption, any unexpended amounts of such borrowed money shall be credited on the redemption price of the Property. In addition, any costs incurred, or advances made, by Beneficiary in connection with the implementation or operation of the receivership, shall be added to the Obligations, bear interest at the Overdue Rate and be secured by this Deed of Trust.

**20. Additional Remedies of Beneficiary; No Waiver.** In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies allowed or provided for under or described in the Loan Agreement, the Note and all other writings executed or delivered in connection with the Obligations, or available under applicable law. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the Obligations after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligations or to consider failure to so perform or pay a default hereunder.

**21. Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure.** After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

1. To the payment of the costs and expenses of such sale, including reasonable compensation to Trustee, Beneficiary, their agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities, and advances made or incurred by Trustee or Beneficiary under this Deed of Trust, together with interest at the Overdue Rate specified in the Note.
2. To the payment of the whole amount then due, owing, or unpaid upon the Note for principal and interest, with interest on the unpaid principal and accrued interest at the rate specified in the Note, from and after the happening of any Event of Default from the due date of any such payment of principal until the same is paid.
3. To the payment of all other Obligations required to be paid by Trustor pursuant to any provisions of the Loan Documents.
4. The surplus, if any, to whomsoever may be lawfully entitled to receive the same, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Property is located.

Upon any sale made under or by virtue of this section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for

and acquire the Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Obligations of Trustor secured by this Deed of Trust the net sales price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Beneficiary is authorized to deduct under this Deed of Trust. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. **Trustor agrees to pay any deficiency arising from any cause to which Beneficiary may be entitled after application of the proceeds of any sale in accordance with applicable law.**

**22. Attorneys' Fees and Expenses; Failure of Trustor to Vacate.** If any sale, proceeding, lawsuit or arbitration is commenced, or any attorney is retained to collect any amounts secured hereby or to enforce any rights granted Beneficiary hereunder (regardless of whether an action is actually commenced), Trustor shall pay Beneficiary's reasonable attorneys' fees and costs (to be determined by the court or arbitrator and not by jury, in the case of litigation or arbitration) incurred in enforcing its rights under the Note, this Deed of Trust, the Loan Agreement and Beneficiary's other loan documents, any guaranty now or hereafter relating to the Obligations and any other agreements which evidence, secure or guarantee all or any portion of the Obligations, and Trustee's reasonable attorneys' fees, Trustee's fees and its costs and expenses in connection with any sale proceedings or lawsuit. In addition, Trustor shall pay a reasonable fee for title searches, foreclosure reports, trustee's sale guaranties, litigation guaranties, publication costs, environmental assessments or appraisal reports made or obtained either (i) in preparation for and in the conduct of any such proceedings or suit, or (ii) to evidence to potential bidders at any judicial or nonjudicial sale pursuant to this Deed of Trust the true condition of title to or the value of the Property or any portion thereof. All of the foregoing fees and expenses shall be payable on demand, added to the Obligations and secured by this Deed of Trust, shall be included in any judgment or arbitration award obtained by Beneficiary and shall be paid to Beneficiary as part of any reinstatement tendered hereunder. If Trustor fails to vacate the Property following foreclosure or sale, Trustor shall be a tenant at sufferance and subject to an action for forcible entry and detainer, wherein Beneficiary shall be entitled to collect from Trustor, in addition to all other amounts due hereunder, a reasonable rental for the Property during the period of such holding over at sufferance.

**23. Sale of Property in Whole or in Separate Parcels; Right of Beneficiary to Buy.** In the event of a trustee's sale or foreclosure sale, the Property may be sold, at the option of Beneficiary or Trustee, in whole or in separate parcels, and Beneficiary or Trustee may bid and become the purchaser at any such sale. Trustee shall deliver to any such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in any such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The proceeds of the sale shall be applied as provided by law. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Property. Title to all insurance policies and the proceeds thereof shall vest in and become the property of the purchaser at any such sale, as provided in paragraph 3(c) hereof. The power of sale under this Deed of Trust shall not be exhausted by any one or more sales or attempted sales as to all or any portion of the Property remaining unsold, but shall continue in full force and effect until all of the Property shall have been sold by exercise of the power of sale in this Deed of Trust and the Obligations has been fully paid and performed.

**24. Effect of Foreclosure on Existing Leases.** Upon any sale of the Property under this Deed of Trust, any Lease that is subordinate to the lien of this Deed of Trust shall remain in effect, the purchaser thereby being subrogated to Trustor's interest therein, unless the purchaser elects to treat any such Lease as terminated by virtue of the sale under the prior lien and charge of this Deed of Trust, unless a separate nondisturbance agreement, in the form of Beneficiary's standard Subordination, Non-Disturbance and Attornment Agreement or similar agreement approved as to form and substance by Beneficiary in its sole and absolute discretion, executed by Beneficiary precludes such termination.

**25. Reconveyance of Property.** Upon (a) written request of Beneficiary stating that the entire Obligations has been paid, (b) surrender of this Deed of Trust and the Note to Trustee for cancellation and retention, and (c) payment of Trustee's fees, if any, Trustee shall reconvey the Property without warranty. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

**26. Partial Reconveyance by Trustee; Dedications and Easements.**

(a) At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note, without affecting the personal liability of any person for payment or performance of any portion of the Obligations or the lien or priority of this Deed of Trust, Trustee may reconvey any part of the Property, consent to any rezoning or the making of any map or plat thereof, join in granting any easement or dedication thereon or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Property, or join in any extension agreement or agreement subordinating the lien or charge hereof.

(b) So long as no Event of Default then exists, and Trustor obtains any required written joinders or consents from any other parties who have interests in any relevant portions of the Real Property, Beneficiary shall not unreasonably withhold its consent to, approval of or joinder (on a quitclaim basis only, without creating potential liability for Beneficiary) in any customary and standard roadway or utility easements or similar dedications that are reasonably necessary to complete the improvements, or to otherwise properly develop the Real Property, or to satisfy any customary and standard Legal Requirements. To the extent any such easements or dedications are granted or made without receipt by Trustor of consideration therefor, Beneficiary shall provide appropriate partial releases from the lien of this Deed of Trust without charge to Trustor except for the reimbursement of any Beneficiary costs and expenses in connection therewith.

**27. Acceptance of Trust; Trustee Resignation; Notification of Sale.** Trustee accepts the trust created hereby, which shall be irrevocable by Trustor, when this Deed of Trust, executed and acknowledged, is recorded as provided by law. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

**28. Successor Trustee.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title.

**29. Additional Security.** The taking or acceptance of this Deed of Trust by Beneficiary shall in no event be considered to constitute a waiver of, or in any way affect or impair, any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the Obligations, nor shall the taking at any time by Beneficiary of any such additional security be construed to constitute a waiver of, or in any way affect or impair, the security of this Deed of Trust. Beneficiary may resort to its several securities for the payment of the Obligations in such order and manner as it may deem appropriate. Trustor, and any party hereafter claiming an interest in any portion of the Property by or through Trustor (other than Beneficiary), hereby waive any benefits under the doctrine of marshaling in the event of judicial or nonjudicial foreclosure under this Deed of Trust.

**30. Construction of Agreement; Definitions.** This Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of paragraphs in this Deed of Trust are for convenience and reference only, and in no way define or limit the scope or intent of this Deed of Trust or the provisions of such paragraphs. This Deed of Trust shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice or deliberately chosen not to be so represented, in the negotiation of this Deed of Trust, neither this Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Deed of Trust as a whole rather than to any particular paragraph; (c) "person" includes a corporation, trust, partnership, limited liability company, association, governmental authority or other entity, as well as a natural person; (d) "Beneficiary" shall mean the holder at any time, including pledgees, of the Note or other writings secured hereby, whether or not named as Beneficiary herein; and (e) "Trustor" shall include all persons or entities named in this Deed of Trust as Trustors, severally and collectively, and any subsequent owner of all or any portion of the Property, and their liability under this Deed of Trust shall be joint

and several (however, the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof).

**31. Time of the Essence; Successors and Assigns.** Time is of the essence hereof. Without limitation of the restrictions on transfer described in paragraph 13 above, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, personal representatives, legatees, devisees, successors and assigns.

**32. Governing Law.** THIS DEED OF TRUST AND THE TRANSACTION CONTEMPLATED HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES (REGARDLESS OF THE PLACE OF BUSINESS, RESIDENCE, LOCATION OR DOMICILE OF TRUSTOR OR ANY PRINCIPAL THEREOF OR ANY GUARANTOR OF ANY PORTION OF THE INDEBTEDNESS EVIDENCED BY THE NOTE), EXCEPT AS TO MATTERS RELATING TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE DEED OF TRUST AND THE LIENS ON AND SECURITY INTEREST IN AND TO THE PROPERTY AND OTHER COLLATERAL FOR THE LOAN, WHICH SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH. TRUSTOR ACKNOWLEDGES THAT BENEFICIARY HAS PERMITTED THE UNDERSIGNED TO EXECUTE THIS ASSIGNMENT OUTSIDE OF NEW YORK AT THE REQUEST OF, AND AS AN ACCOMMODATION TO, TRUSTOR. THE PARTIES HERETO ACKNOWLEDGE, STIPULATE AND AGREE THAT (a) THE TRANSACTION EVIDENCED, GOVERNED AND/OR SECURED HEREBY BEARS A REASONABLE RELATIONSHIP TO THE STATE OF NEW YORK IN THAT, AMONG OTHER THINGS, BENEFICIARY HAS CONDUCTED A SUBSTANTIAL PART OF THE NEGOTIATIONS FOR THE TRANSACTION IN THE STATE OF NEW YORK, BENEFICIARY AND TRUSTOR WILL EACH PERFORM A SUBSTANTIAL PART OF THEIR OBLIGATIONS FOR THIS TRANSACTION IN THE STATE OF NEW YORK, AND (b) BENEFICIARY WOULD NOT HAVE ENTERED INTO THIS TRANSACTION BUT FOR THE FOREGOING STIPULATION AND AGREEMENT AS TO THE CHOICE OF NEW YORK LAW TO GOVERN THE TRANSACTION. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK OR, AT THE SOLE OPTION OF BENEFICIARY, IN ANY OTHER COURT IN WHICH BENEFICIARY SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. EACH OF TRUSTOR AND BENEFICIARY WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 32 AND SUBMITS TO THE PROCESS, JURISDICTION AND VENUE OF ANY SUCH COURT. TRUSTOR ALSO WAIVES THE RIGHT TO PROTEST THE DOMESTICATION OR COLLECTION OF ANY JUDGMENT OBTAINED AGAINST TRUSTOR WITH RESPECT TO THIS ASSIGNMENT OR THE LOAN EVIDENCED HEREBY IN ANY JURISDICTION WHERE TRUSTOR MAY NOW OR HEREAFTER MAINTAIN ASSETS.

**33. Notices.** Except as provided in paragraph 21 hereof with respect to Trustee's exercise of the power of sale contained herein or as otherwise required by law, all notices required or permitted to be given hereunder shall be given as provided in the Loan Agreement.

**34. Amendment.** This Deed of Trust may not be amended or changed except by a written agreement signed by Trustor and Beneficiary.

**35. Severability; Enforceability.**

(a) Each covenant, provision and condition of this Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein.

(b) Should this instrument be or ever become ineffective as a deed of trust, then it shall be construed and enforceable as a realty mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

(c) If the lien of this instrument is invalid or unenforceable (either as a deed of trust or as a realty mortgage) as to any part of the Obligations, or if the lien is invalid or unenforceable as to any portion of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligations. All payments made on the Obligations, whether voluntary or pursuant to foreclosure or some other enforcement action or procedure taken hereunder, shall be considered to have been first applied to the full payment of that portion of the Obligations which is not secured or fully secured by the lien of this instrument.

**36. Subrogation.** Beneficiary shall be subrogated to the rights and lien, whether or not released of record, of the owner or holder of each and every encumbrance or lien paid from the proceeds of the loan or advances secured hereby, and such loan or advances have been or will be advanced, if at all, at Trustor's request.

**37. Incorporation of Exhibits.** Any exhibit attached hereto is hereby incorporated herein and made a part hereof for all purposes, and references in this Deed of Trust to such exhibits shall be deemed to include this reference and incorporation.

**38. Declarations and Associations.** The assignment herein by Trustor to Beneficiary of the rights of Trustor with respect to any declaration of covenants, conditions and restrictions, any design review or architectural control committee and any owners' or similar association, together with any voting rights therein, shall be for the purpose of security only and shall not impose any duty or obligation on Beneficiary with respect to any such matters unless expressly assumed by Beneficiary in a writing which is recorded.

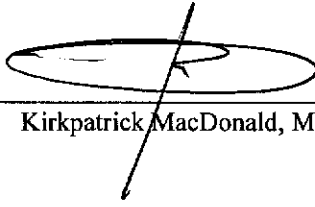
**39. No Offset.** All sums comprising the Obligations payable by Trustor shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Trustor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Property or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Property or any portion thereof; (c) any title defect or encumbrance, or any eviction from the Property or any portion thereof by the holder of superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor or Beneficiary, or by any court, in any such proceeding; (e) any claim that Trustor may now or in the future have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or any other loan document with Trustor; or (g) any other similar or dissimilar occurrence. Beneficiary's acceptance of any payment in an amount less than the amount then due and owing under the Loan Documents shall be deemed an acceptance on account only, and shall not in any way constitute an accord and satisfaction or a waiver, or impair Beneficiary's ability to treat an Default or Event of Default as continuing to exist.

**40. No Merger.** If the interests of Beneficiary and Trustor under this Deed of Trust shall at any time become vested in Beneficiary, by reason of foreclosure or otherwise, the lien of this Deed of Trust shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates, unless otherwise consented to in writing by Beneficiary.

[Signature Page Follows]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

**PARK CITY WILDLIFE CONSERVANCY LAND TRUST,  
LLC**, a Delaware limited liability company

By:  \_\_\_\_\_  
Kirkpatrick MacDonald, Manager

“Trustor”

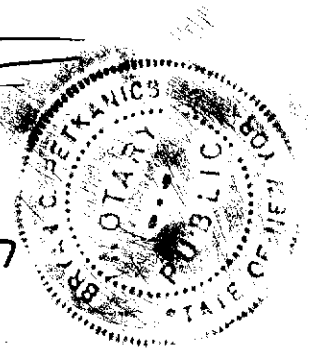
STATE OF NY )  
COUNTY OF NY ) : ss.

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of June 2005, by Kirkpatrick MacDonald, the Manager of **PARK CITY WILDLIFE CONSERVANCY LAND TRUST, LLC**, a Delaware limited liability company, on behalf of such company.

  
NOTARY PUBLIC

[Seal]

**BRYAN G. PETKANICS**  
Notary Public, State of New York  
No. 31-4901319  
Qualified in New York County  
Commission Expires June 29, 2007



## **EXHIBIT "A"**

### **Legal Description of Real Property**

Shall mean that certain real property located in Summit County, Utah more particularly described as follows :“Red Hawk Ranch Plat “F”, a subdivision located in Section 6, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, and further described as follows:

# COMMITMENT FOR TITLE INSURANCE

## Exhibit "A" (Legal Description)

File No. F-S9936  
Amendment No. 3

All of Plat F, Red Hawk Ranch Subdivision, according to the official Plat thereof on file and of record in the Summit County Recorder's Office;

Except, beginning at a point which lies on the Northeast Corner of Lot 33, of "The Ridge at Red Hawk" subdivision, said point also lies North 89°54'18" East along the section line, 1922.15 feet and North 1840.79 feet from the South Quarter Corner of Section 6, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence West along the Northerly line of said Lot 33, 742.91 feet; thence North 12°14'59" West 143.31 feet to the point of curve of a 90.00 foot radius curve to the right, center bears North 77°45'01" East; thence Northeasterly along the arc of said curve 122.78 feet through a central angle of 78°09'59"; thence North 65°55'00" East 167.43 feet to the point of curve of a 100.00 foot radius curve to the left, center bears North 24°05'00" West; thence Northeasterly along the arc of said curve 122.14 feet, through a central angle of 69°58'46" to the point of reverse curve of a 350.00 foot radius curve to the right, center bears North 85°54'14" East; thence Northeasterly along the arc of said curve 261.80 feet, through a central angle of 42°51'25" to the point of reverse curve of a 75.00 foot radius curve to the left, center bears North 51°12'21" West; thence Northeasterly along the arc of said curve 64.99 feet, through a central angle of 49°39'03"; thence North 79°08'36" East 346.10 feet; thence South 32°29'43" East 31.05 feet; thence South 21°21'03" East 147.05 feet; thence South 00°27'45" West 163.61 feet; thence South 13°41'36" East 156.17 feet; thence South 02°36'16" East 137.50 feet; thence South 17°24'33" West 144.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM that portion located within the bounds of Section 32, Township 1 North, Range 4 East, Salt Lake Base and Meridian, (Said Parcel being 200 feet by 225 feet.

The following is shown for informational purposes only: SS-14-A, SS-14-B, RHWK-F-A, RHWK-F-B, RHWK-F-C, RHWK-F-F-2, RHWK-F-F-3, RHWK-F-F-4, RHWK-F-F-5, RHWK-F-F-6, RHWK-F-F-7, RHWK-F-F-8, RHWK-F-F-9, RHWK-F-F-10, RHWK-F-F-11, RHWK-F-F-12, RHWK-F-F-13, RHWK-F-F-14, RHWK-F-F-15, RHWK-F-F-16, RHWK-F-F-17, RHWK-F-F-18, RHWK-F-F-19, RHWK-F-F-20, RHWK-F-F-21.



**EXHIBIT "B"**

**Financing Statement Information**

The Beneficiary/Secured Party is:

HSBC BANK USA, National Association  
452 Fifth Avenue  
New York, New York 10018

The Debtor is:

PARK CITY WILDLIFE CONSERVANCY LAND TRUST, LLC  
2 South Main Street, 2<sup>nd</sup> Floor  
Heber City, Utah 84032

Employer Identification No. 20-2859682

Entity No. State of Delaware, no. 7486767

The Collateral is the Personal Property (including all fixtures) described in this Deed of Trust.

The Beneficiary/Secured Party is \_\_\_\_ is not  X  a seller or purchase money lender of the Collateral.

BK1711 PG0945