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 GARY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
 LANDMARK TITLE
 BY: ZJM, DEPUTY - WI 31 P.

When Recorded, Mail to:
 Charter Oak Real Estate Fund, LLC
 Attn: Lynn P. Consentino
 942 Chestnut Ridge Road
 Millbrook, New York 12545

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

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING ("Trust Deed") is made this 23rd day of December, 2005, among MICHAEL J. VAN LEEUWEN, the address of which is 4547 Abinadi Road, Salt Lake City, UT 84124 ("Tristor"); LANDMARK TITLE COMPANY, the address of which is 675 East 2100 South, Suite 250, Salt Lake City, UT 84106, and its successors in trust and assigns ("Trustee"), and CHARTER OAK REAL ESTATE FUND, LLC, a Delaware limited liability company, the address of which is 38C Grove Street, Ridgefield, CT 06877 ("Beneficiary"). The terms herein shall have the same meaning as defined in that certain Security Agreement, executed by Tristor, of even date herewith (the "Security Agreement"), and unless otherwise noted the terms of the Security Agreement shall control.

1. **GRANTING CLAUSE.** Tristor, in consideration of the acceptance by Trustee of the trust hereunder, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the obligations described in Section 3 below, sells, transfers, assigns and conveys to Trustee and its successors in trust and assigns, forever, in trust, with power of sale, all of Tristor's estate, right, title, interest, claim, and demand in and to the property in the county of Salt Lake, State of Utah with a street address of 4547 Abinadi Road, Salt Lake City, UT 84124, described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 is herein called the "Property"):

1.1 **Land.** The land more particularly described on Exhibit A attached hereto and incorporated into this Trust Deed by reference;

1.2 **Easements.** All and singular the easements, rights-of-way, water and water rights of every kind and nature (including but not limited to claims, decrees, applications, permits, licenses, storage rights, ditches and ditch rights, riparian and littoral rights, and all shares of stock and memberships in any canal or irrigation company), rights to timber to-be-cut, minerals and mineral rights (including oil and gas rights) and other as-

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extracted collateral, geothermal rights, rights of development, use or occupancy, privileges, franchises, tenements, appendages, hereditaments and appurtenances and all other rights belonging or in any way appertaining to the Land, and all right, title, and interest of Trustor in and to all streets, roads, railways and public places, opened or postponed, and all easements and rights-of-way, public or private, now or hereafter used in connection with, or belonging or appertaining to the Land, and all of the estate, right, title, interest, claim, and demand whatsoever of Trustor in and to the Land and all of the foregoing described interests and rights, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

1.3 **Improvements.** All structures, buildings, and improvements of every kind and description now or at any time hereafter located on the Property including but not limited to houses, fences, garages, sheds, irrigation systems including without limitation, equipment, pumps, wells, and additions to, substitutions for, changes in or replacements of the whole or any part thereof, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof, including, without limitation, all equipment, apparatus, machinery, fixtures, fittings and appliances, and any additions to, substitutions for, changes in, or replacements of the whole or any part thereof, including such of the foregoing as may be used in connection with the generating or distributing of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or sanitary purposes or for the exclusion of vermin or insects, or for the removal of dust, refuse or garbage, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the use, enjoyment, occupancy, or operation of the Land or Improvements or any portion thereof;

1.4 **Fixtures and Personal Property.** All fixtures, chattels, business machinery, appliances, equipment and articles of personal property of every kind and nature whatsoever and any additions to, substitutions for, changes in or replacements of the whole or any part thereof including, without limitation, all wall-safes, built-in furniture and installations, shelving, partitions, door-stops, vaults, elevators, dumb-waiters, awnings, window shades, blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and brackets, screens, linoleum, carpets, plumbing, refrigerators, coolers, freezers, racks, heating units, stoves, ovens, water heaters, incinerators, furniture and furnishings, desks, shelving, tables, chairs, wall decorations, communication systems, security systems, and computer systems (including embedded software), printers, photocopy and facsimile machines, registers, irrigation equipment (including but not limited to pipes and piping, hand lines, drip lines, pivots, sprinklers, and all ancillary equipment), all specifically designed installations and furnishings and all said articles of property, the specific enumerations herein not excluding the general, now or at any time hereafter affixed to or attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy, development, construction or operation of the Property or the Improvements or any portion thereof and owned by Trustor or in which Trustor now has or hereafter acquires an interest, and all building materials, supplies, equipment, and

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personal property described above now or hereafter delivered to the Property and intended to be installed or placed in or about the Property or Improvements;

1.5 Leases and Rents. All of the Rents (as defined in the Security Agreement), and including rents, royalties, issues, profits, revenue, income and other benefits of the Property, or arising from the use or enjoyment of all or of any part thereof or from any lease, contract or agreement pertaining thereto, and all right, title and interest of Trustor in and to all Leases (as defined in the Security Agreement), and including all leases and rental contracts, written or verbal, subleases, occupancy agreements, license agreements, operating agreements or concessions affecting any of the Property which Trustor may at any time enter into with respect to the Property or Improvements, as such Leases may be modified, extended and renewed, and all right, title and interest of Trustor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligation thereunder, whether such cash or securities are to be held until the expiration of the terms of said leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of said terms;

1.6 Intangibles. All present and future right, title and interest of Trustor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC), and all Collateral and Contracts (as such terms are defined in the Security Agreement) and including agreements, obligations, rights and written materials, in each case whether existing now or in the future, relating to or otherwise arising in connection with or derived from the Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Property, including, without limitation: (i) permits, approvals and other authorizations of governmental authorities, zoning approvals, building permits, plat approvals, development approvals and agreements, and other agreements, (ii) agreements with suppliers, project managers, supervisors, contractors, architects, engineers, sales agents, leasing agents, consultants, and property managers, and all of Trustor's rights, title and interest in and to Plats and Surveys as recorded and as may be recorded pursuant to law or agreement; (iii) takeout refinancing and permanent loan commitments, (iv) warranties, guaranties, indemnities and insurance policies (whether or not required to be carried by Trustor pursuant to the terms hereof), together with insurance payments and unearned insurance premiums, (v) claims, demands, awards, settlements and other payments arising or resulting from or otherwise relating to any insurance (whether or not Beneficiary is named as a loss payee of such insurance) or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vi) license agreements, lease agreements, easement and access agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits, purchase deposits and other amounts paid to or deposited with Trustor or placed into escrow pursuant to any such agreements, (vii) reserves,

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deposits, security deposits, bonds, performance bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, (viii) membership agreements and related dues, fees, assessments, and deposits and other revenues relating to parking or other facilities, (ix) contracts for the sale of portions of the Property, existing and to be entered into in the future; (x) all trade names, trademarks, logos, copyrights, goodwill and books and records relating to or used in connection with the operation of the Property or the equipment or any part thereof, (xi) all general intangibles related to the operation of the Property now existing or hereafter arising, and (xii) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property;

1.7 Accounts. All accounts, accounts receivable, deposit accounts, chattel paper (whether electronic or tangible), instruments, promissory notes, documents, general intangibles, payment intangibles, letter of credit rights, insurance receivables and other rights to payment, now existing or at any time hereafter, and prior to the termination hereof, arising (whether they arise from the sale, lease or other disposition of property or inventory or from performance of contracts for service, manufacture, construction, repair or otherwise or from any other source whatsoever), including all securities, guaranties, warranties, indemnity agreements, insurance policies, supporting obligations and other agreements pertaining to the same or the property described therein, and in all property and goods returned by or repossessed from Trustor's customers;

1.8 Inventory. All inventory, goods held for sale or lease or to be furnished under contracts for service, goods so leased or furnished, raw materials, component parts and embedded software, work in process or materials used or consumed in Trustor's business and all warehouse receipts, bills of lading and other documents evidencing goods owned or acquired by Trustor, and all goods covered thereby, now or at any time hereafter, and prior to the termination hereof, owned or acquired by Trustor, wherever located, and all products thereof, whether in the possession of Trustor, warehousemen, bailees or any other person, or in process of delivery, and whether located at Trustor's places of business or elsewhere, together with whatever is receivable or received when any of the proceeds thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, all rights to payment, including returned premiums, with respect to any insurance relating to any of the foregoing, and all rights to payment with respect to any claim, cause of action, Lien (including, but not limited to, materialmen's liens) and other rights affecting or relating to any of the foregoing;

1.9 Property Accounts. Any and all monies now or subsequently on deposit for the payment of real estate taxes or special assessments against the Property or for the payment of premiums on insurance policies covering the foregoing property or otherwise on deposit with or held by Beneficiary as provided in this Trust Deed; all capital,

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operating, reserve or similar accounts held by or on behalf of Trustor and related to the operation of the Property, whether now existing or hereafter arising and all monies held in any of the foregoing accounts and any certificates or instruments related to or evidencing such accounts;

1.10 **Insurance Proceeds.** All proceeds (including claims and demands therefor) with respect to the conversion, voluntary or involuntary, of the Property into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards; and

1.11 **Business Licenses.** All variances, licenses and permits for operation of any business on the Property, development rights or credits, air rights, and all other intangible property and rights relating to the Property;

1.12 **Books and Records.** All books and records of Trustor relating to the foregoing in any form.

1.13 **Additions to Property.** All right, title and interest of Trustor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of and all additions and appurtenances to the Property hereafter acquired by or released to Trustor or constructed, assembled or placed by Trustor on the Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further deed of trust, conveyance, assignment or other act by Trustor, shall become subject to the lien of this Trust Deed as fully and completely and with the same effect as though now owned by Trustor and specifically described in the granting clause hereof, and at any and all times Trustor will execute and deliver to Beneficiary any and all such further assurances, deeds of trust, conveyances or assignments thereof as Beneficiary may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Trust Deed; and

1.14 **Enforcement and Collection.** Any and all rights of Trustor without limitation to make claim for, collect, receive, and receipt for any and all rents, income, revenues, issues, royalties, and profits, including mineral, oil, and gas rights and profits, insurance proceeds of any kind (whether or not Beneficiary requires such insurance and whether or not Beneficiary is named as an additional insured or loss payee of such insurance), condemnation awards, and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement (including those described in Section 1.2 above) affecting or relating to any of the Property, to bring any suit in equity, action at law, or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, award, or judgment, in the name of Trustor or otherwise, and to do any and all things that

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Trustor is, may be, or become entitled to do with respect thereto, provided, however, that no obligation of Trustor under the provisions of any such agreements, awards, or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Trustee or Beneficiary.

Notwithstanding any other provision in this Trust Deed, this Trust Deed shall not secure any guaranty given by Trustor or by Van Leeuwen Pocatello, LLC (the "LLC") or any third party of the Secured Obligations, as defined hereafter, or any separate environmental indemnity agreement given by Trustor or the LLC or any other person in favor of Trustor. Trustor's rights and remedies under any such guarantees and environmental indemnities may be exercised separately from and regardless of whether an action is also taken by Trustor pursuant to this Trust Deed or any other Secured Obligation and shall survive any foreclosure of this Trust Deed.

2. SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS.

2.1 Security Agreement. To the extent any of the property described in Section 1 is personal property, Trustor, as debtor, grants to Beneficiary, as secured party, a security interest therein together with a security interest in all other personal property of whatsoever nature that is located on or used or to be used in connection with any of the property described in Section 1, and any products or proceeds of any thereof, pursuant to the Uniform Commercial Code of the State of Utah (the "UCC"), on the terms and conditions contained herein. Beneficiary hereby assigns such security interest to Trustee, in trust, for the benefit of Beneficiary to be dealt with as a portion of the "Property" except as otherwise specified herein. Trustor hereby authorizes Beneficiary to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Trust Deed without Trustor's signature.

2.2 Assignment of Leases and Rents.

(a) Absolute Assignment. Trustor hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Beneficiary all of Trustor's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and hereafter arising which affect the Property, Trustor's interest therein or any improvements located thereon, together with any and all security deposits, guarantees of the lessees' or tenants' obligations (including any and all security thereunder) and other security under any such leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other

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agreements (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Beneficiary the right to collect all the income, rents, issues, profits, royalties and proceeds from the Leases and any business conducted on the Property and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). This Trust Deed is intended by Beneficiary and Trustor to create and shall be construed to create an absolute assignment to Beneficiary of all of Trustor's right, title and interest in and to the Leases and the Rents and shall not be deemed merely to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as hereinafter defined). Trustor irrevocably appoints Beneficiary its true and lawful attorney at the option of Beneficiary at any time to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Trustor or in the name of Beneficiary, for all such Rents and apply the same to the obligations secured by this Trust Deed.

(b) Revocable License to Collect. Notwithstanding the foregoing assignment of Rents, so long as no Event of Default (as hereinafter defined) remains uncured, Trustor shall have a revocable license, to collect all Rents, and to retain the same. Upon any Event of Default, Trustor's license to collect and retain Rents shall terminate automatically and without the necessity for any notice.

(c) Collection and Application of Rents by Beneficiary. While any Event of Default remains uncured: (i) Beneficiary may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Trust Deed, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) without demand by Beneficiary therefor, Trustor shall promptly deliver to Beneficiary all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Trustor, whether prior to or during the continuance of any Event of Default. Any Rents collected by or delivered to Beneficiary may be applied by Beneficiary against the obligations secured by this Trust Deed, less all expenses, including attorneys' fees and disbursements, in such order as Beneficiary shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Trust Deed or other action taken by Beneficiary under this Section 2.2 shall be deemed or construed to cure or waive any Event of Default, or to invalidate any other action taken in response to such Event of Default, or to make Beneficiary a Beneficiary-in-possession of the Property.

(d) Direction to Tenants. Trustor hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Trustor thereunder to Beneficiary following receipt of any written notice from Beneficiary that states that an Event of Default remains uncured and that all such amounts are to be paid to Beneficiary.

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Trustor further authorizes and directs all such tenants to pay all such amounts to Beneficiary without any right or obligation to inquire as to the validity of Beneficiary's notice and regardless of the fact that Trustor has notified any such tenants that Beneficiary's notice is invalid or has directed any such tenants not to pay such amounts to Beneficiary.

3. **OBLIGATIONS SECURED.** This Trust Deed is given for the purpose of securing the following obligations (collectively, the "Secured Obligations"):

3.1 **Performance and Payment.** The performance of the obligations contained herein and the payment of the total loan amount of \$5,000,000.00, with \$2,600,000.00 allocated toward the Property, and \$2,400,000.00 allocated toward real property located in Bannock County, Idaho, and secured by a mortgage (the "Idaho Obligations"), with interest thereon and all other amounts payable according to the terms of a promissory note of even date herewith made by Trustor, payable to Beneficiary or order, and any and all extensions, renewals, modifications, or replacements, thereof, whether the same be in greater or lesser amounts (the "Note"), which Note may provide for one or more of the following: (a) a variable rate of interest, (b) a balloon payment at maturity or (c) deferral of a portion of accrued interest under certain circumstances with interest so deferred added to the unpaid principal balance of the Note and secured hereby, and

3.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Beneficiary subsequent to the execution of this Trust Deed for the maintenance or preservation of the Property or advanced or expended by Beneficiary pursuant to any provision of this Trust Deed subsequent to its execution, together with interest thereon.

4. **WARRANTIES AND COVENANTS OF TRUSTOR.** Trustor warrants, covenants, and agrees:

4.1 **Warranties**

(a) Trustor has full power and authority to grant the Property to Trustee and warrants the Property to be free and clear of all liens, charges, and other monetary encumbrances except those appearing of record on the date hereof.

(b) None of the Property is used principally or at all for agricultural or farming purposes.

(c) The Property is free from damage and no matter has come to Trustor's attention (including, but not limited to, knowledge of any construction defects or nonconforming work) that would materially impair the value of the Property as security.

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4.2 Preservation of Lien. Trustor will preserve and protect the priority of this Trust Deed as a second lien on the Property. If Trustor fails to do so, Beneficiary may take any and all steps necessary or appropriate to do so and all sums expended by Beneficiary in so doing shall be treated as part of the obligations secured by this Trust Deed, shall be paid by Trustor upon demand by Beneficiary and shall bear interest at the highest rate borne by any of the obligations secured by this Trust Deed.

4.3 Repair and Maintenance of Property. Trustor will keep the Property in good condition and repair, which duty shall include but is not limited to continual cleaning, painting, landscaping, repairing, and refurbishing of the Property, will complete and not remove or demolish, alter, or make additions to any building or other improvement that is part of the Property, or construct any new structure on the Property, without the express written consent of Beneficiary, will underpin and support when necessary any such building or other improvement and protect and preserve the same; will complete or restore promptly and in good and workmanlike manner any such building or other improvement that may be damaged or destroyed and pay when due all claims for labor performed and materials furnished therefor; will not commit, suffer, or permit any act upon the Property in violation of law, and will do all other acts that from the character or use of the Property may be reasonably necessary for the continued operation of the Property in a safe and legal manner, the specific enumerations herein not excluding the general.

4.4 Insurance

4.4.1 All Risk/Hazard. Trustor shall maintain insurance in the types and amounts required under the Security Agreement, and, without limiting the foregoing will provide, maintain and deliver to Beneficiary, as further security for the faithful performance of this Trust Deed, all risk insurance covering fire, casualty and such other hazards as may be specified by Beneficiary (including insurance against flood, if the Property is situated in a designated flood zone) in an amount equal to one hundred percent (100%) of the replacement cost of the Property. All policies of insurance on the Property, whether or not required by the terms of this Trust Deed, shall name Beneficiary as an additional insured, with such deductibles as approved by Beneficiary but that are, in any event, not more than Ten Thousand Dollars (\$10,000). Trustor shall be responsible for any uninsured losses and any deductibles. All existing and future policies for all insurance required by this Trust Deed and all other insurance obtained by Trustor with respect to the Property, whether or not required by Beneficiary (including, but not limited to, earthquake insurance), and the proceeds of all of the foregoing, are hereby assigned to Beneficiary, but no such assignment shall be effective to invalidate or impair any insurance policy.

4.4.2 Liability. Trustor shall maintain insurance in the types and amounts required under the Security Agreement, and, without limiting the foregoing will

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maintain comprehensive general liability insurance covering the legal liability of Trustor against claims for bodily injury, personal injury, death, property damage or advertising injury occurring on, in, or about the Property with coverage of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate, and naming Beneficiary an additional insured.

4.4.3 Intentionally Left Blank

4.4.4 Insurance Survey. Trustor shall from time to time obtain such additional coverages or make such increases in the amounts of existing coverage as may reasonably be requested by Beneficiary.

4.4.5 General Provisions. All policies of insurance required to be maintained by Trustor pursuant to this Section 4.4 shall: (i) be primary and noncontributory with any other insurance Trustor may carry; (ii) be in form and substance and with companies acceptable to Beneficiary which are authorized to conduct business in the state in which the Property is located and which have a current rating of A-XII or better from the current Best Key Rating Guide; (iii) contain a Beneficiary endorsement acceptable to Beneficiary; and (iv) contain waivers of subrogation and of any co-insurance clauses. Beneficiary reserves the right, in its sole discretion, to increase the amount of the required coverages, require insurance against additional risks, or withdraw approval of any insurance company at any time. Trustor shall deliver to Beneficiary an original of all policies of insurance and shall obtain renewals of any policies which expire and deliver evidence of such renewals to Beneficiary no later than ten (10) days prior to the expiration date of the policy being replaced. All policies and renewals thereof shall contain provision for thirty (30) days' notice to Beneficiary prior to any cancellation thereof or material change thereto. In the event of any loss covered by such policies, Trustor shall give immediate written notice to the insurance carrier and to Beneficiary. Trustor hereby authorizes and empowers Beneficiary as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this Section 4.4.5 shall require Beneficiary to incur any expense or take any action hereunder. Notwithstanding any of the foregoing, neither Trustor nor Beneficiary shall be responsible for any such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of and pass to the purchaser of the Property at any trustee's or sheriff's sale held hereunder.

4.4.6 Damage and Destruction.

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(a) Trustor's Obligations. In the event of any damage to or loss or destruction of the Property, Trustor shall: (i) promptly notify Beneficiary of such event if the damage to or loss or destruction of the Property is of a value in excess of Twenty-Five Thousand Dollars (\$25,000); (ii) take such steps as shall be necessary to preserve any undamaged portion of the Property, and (iii) unless otherwise instructed by Beneficiary shall, regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, promptly commence and diligently pursue to completion the restoration, replacement and rebuilding (collectively, "Restoration") of the Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction and in accordance the plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Beneficiary, which approval shall not be unreasonably withheld or delayed.

(b) Beneficiary's Rights: Application of Proceeds. In the event that any portion of the Property is so damaged, destroyed or lost, and any such damage, destruction or loss is covered in whole or in part, by insurance described in subsection 4.4.1, whether or not such insurance is specifically required by the terms of this Trust Deed, then the following provisions shall apply:

(i) If an Event of Default (as defined in Section 5.1) has occurred hereunder and is continuing: (A) Beneficiary may, but shall not be obligated to, make proof of loss to any insurer if not made promptly by Trustor, and Beneficiary is hereby authorized and empowered by Trustor to settle, adjust or compromise any claims for damage, destruction or loss thereunder unless the proposed amount of proceeds from such claims exceeds the then outstanding amount of the indebtedness secured hereby, and (B) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Beneficiary, to be applied, at Beneficiary's option, to the indebtedness secured hereby in such order as Beneficiary may determine, in its sole discretion or to be held by Beneficiary for future application to the obligations secured hereby. Unless otherwise required by law, any application to the indebtedness secured hereby by Beneficiary of such payments shall not, by itself, cure or waive any Event of Default hereunder or notice of default under this Trust Deed or invalidate any act done pursuant to such notice or waive any collateral encumbered hereby or otherwise securing the Note.

(ii) If no Event of Default hereunder has occurred and is continuing, and if the amount of proceeds from any claim for damage, destruction or loss is reasonably expected to be Twenty-Five Thousand Dollars (\$25,000) or less, Trustor shall be entitled to receive all such proceeds and shall apply such proceeds to the Restoration of that portion of the Property so damaged, destroyed or lost to as nearly the same condition, character and value as may have existed prior to such damage, destruction or loss, with such changes or alterations as may be required to conform to applicable law.

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(iii) If such proceeds are reasonably expected to exceed Twenty-Five Thousand Dollars (\$25,000), and if an Event of Default has not occurred hereunder and is not continuing, Beneficiary shall apply all such insurance proceeds to the Restoration of the damaged portion of the Property, and such Restoration shall be accomplished as provided in this Section 4.4.6 so long as such Restoration can, in the sole judgment of Beneficiary, be completed (A) no later than one (1) years prior to the maturity date of the Note, (B) within one (1) year after the date of the casualty, and (C) in such a manner so that the Property will have a value at least equal to its value prior to the casualty. Otherwise, Beneficiary may elect in its sole discretion to apply all such insurance proceeds to reduction of the indebtedness secured hereby.

(c) Disbursement of Insurance Proceeds. Insurance proceeds held by Beneficiary for Restoration shall be disbursed from time to time as the Restoration progresses by Beneficiary (or at Beneficiary's election by a disbursing or escrow agent who shall be selected by Beneficiary and whose fees shall be paid by Trustor), upon delivery to Beneficiary of the following: (i) evidence reasonably satisfactory to Beneficiary of the estimated cost of Restoration; (ii) funds (or assurances reasonably satisfactory to Beneficiary that such funds are available) sufficient in addition to the proceeds of insurance to complete and fully pay for the Restoration; and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Beneficiary may reasonably require and approve. No payment made prior to the final completion of Restoration shall exceed ninety percent of the value of the work performed from time to time, as such value shall be determined by Beneficiary in its sole judgment. Prior to commencement of the work, and from time to time thereafter, if so requested by Beneficiary, Trustor shall deposit with Beneficiary an amount of funds in excess of the insurance proceeds which, together with such proceeds, shall at all times be at least sufficient in the sole judgment of Beneficiary to pay the entire unpaid cost of the Restoration, free and clear of all liens or claims of lien. Funds so deposited by Trustor shall be disbursed prior to the disbursement of any insurance proceeds. Any surplus which may remain out of insurance proceeds held by Beneficiary after payment of all costs of the Restoration shall be paid to Trustor. No interest shall be allowed to Trustor on account of any insurance proceeds or other funds held by Beneficiary, but Beneficiary agrees that, at Trustor's request, Beneficiary will deposit any proceeds of insurance held by it for Restoration into a blocked interest-bearing account with Beneficiary over which Beneficiary has sole possession, authority and control, in which Beneficiary has a perfected first-priority security interest to secure the indebtedness secured by this Trust Deed, and otherwise on terms and conditions satisfactory to Beneficiary in its sole discretion. Notwithstanding the above, if an Event of Default occurs prior to full disbursement of the insurance proceeds and any other funds held by Beneficiary to be disbursed to Trustor any undisbursed portion of the insurance proceeds or other such funds may, at Beneficiary's option, be applied against the indebtedness secured by this Trust

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Deed, whether or not then due, in such order and manner as Beneficiary shall select.

(d) Effect on the Indebtedness. Any reduction in the indebtedness secured hereby resulting from the application to the indebtedness secured hereby of insurance proceeds pursuant to this subsection 4.4.6 shall be deemed to take effect only on the date of receipt by Beneficiary of such proceeds and application thereof to the indebtedness secured hereby; provided that, if, prior to the receipt by Beneficiary of such proceeds, the Property shall have been sold in connection with a trustee's sale under, or foreclosure of this Trust Deed, or shall have been transferred by deed in lieu of foreclosure of this Trust Deed, notwithstanding any limitation on Trustor's liability contained herein or in the Note, Beneficiary shall have the right to receive the same to the extent of any deficiency following such sale or conveyance, together with attorneys' fees and disbursements incurred by Beneficiary in connection with the collection thereof.

(e) Conflicts. Notwithstanding the foregoing, the terms and conditions set forth in the Security Agreement concerning insurance shall govern in the event of any inconsistency with this Section 4.

4.5 Right of Inspection. Trustor shall permit Beneficiary or its agents or independent contractors (including, but not limited to, appraisers, environmental consultants and construction consultants), at all reasonable times, to enter upon and inspect the Property.

4.6 Compliance with Laws, Etc.; Preservation of Licenses.

4.6.1 Trustor shall comply in all material respects with (a) all laws, statutes, ordinances, rules, regulations, licenses, permits, approvals, orders, judgments and other requirements of governmental authorities relating to the Property or Trustor's use thereof, and (b) all easements, licenses and agreements relating to the Property or Trustor's use thereof

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4.6.2 Trustor shall observe and comply with all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises, and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions, and nonconforming use permits.

4.7 **Further Assurances.** Trustor will, at its expense, from time to time, execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Trustee or Beneficiary deems necessary or advisable to grant to Trustee the Property or to carry out more effectively the purposes of this Trust Deed.

4.8 **Legal Actions.** Trustor will appear in and defend any action or proceeding before any court or administrative body purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and will pay all costs and expenses, including cost of evidence of title, title insurance premiums, and any fees of attorneys, appraisers, environmental inspectors, and others, incurred by Beneficiary or Trustee, in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary or Trustee to foreclose this Trust Deed and in any non judicial foreclosure of this Trust Deed.

4.9 **Taxes, Assessments, and Other Liens.** Trustor will pay not later than when due all taxes, assessments, encumbrances, charges, and liens with interest, on the Property or any part thereof, which at any time appear to be or are alleged to be prior and superior hereto, including but not limited to any tax on or measured by rents of the Property, the Note, this Trust Deed, or any obligation or part thereof secured hereby.

4.10 **Trust Expenses.** Trustor will pay all costs, fees, and expenses incurred by Beneficiary or Trustee in connection with this Trust Deed.

4.11 **Repayment of Expenditures.** Trustor will pay within five (5) days after written demand all amounts secured by this Trust Deed, other than principal of and interest on the Note, with interest from date of expenditure at the default rate of interest specified in the Note (the "Default Rate") and the repayment thereof shall be secured hereby.

4.12 **Financial and Operating and Governmental Information.** Trustor will, within one hundred twenty (120) days of the close of Trustor's fiscal year, furnish to Beneficiary in such form as it may request, financial statements and balance sheets of

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Trustor and the entities and individuals who are liable for repayment of the Note, and itemized annual statements of income and expense in connection with the operation of the Property, including but not limited to utilization and property inspection reports and such other financial and operating statements of Trustor as Beneficiary may from time to time require and such operating statements, occupancy reports, variance reports, and financial information for the Property as Beneficiary may from time to time require. As soon as it is available, Trustor shall deliver to Beneficiary all Governmental Approvals, as defined in the Security Agreement, including but not limited to, permits, reports, and approvals required hereunder and under the Loan Documents.

If Trustor defaults in its obligation to provide Beneficiary with any of the financial and operating information required to be provided under this Section within the time periods required under this Section and such default continues after Beneficiary has provided Trustor with thirty (30) days' notice and opportunity to cure such default, Trustor shall pay to Beneficiary, as liquidated damages for the extra expense in servicing the loan secured hereby, Five Hundred Dollars (\$500) on the first day of the month following the expiration of such thirty (30) day period and One Hundred Dollars (\$100) on the first day of each month thereafter until such default is cured. All such amounts shall be secured by this Trust Deed.

4.13 Sale, Transfer, or Encumbrance of Property. Trustor shall not, without the prior written consent of Beneficiary, further encumber the Property or any interest therein, cause or permit any change in the entity, ownership, or control of Trustor or agree to do any of the foregoing without first repaying in full the Note and all other sums secured hereby.

Trustor shall not, without the prior written consent of Beneficiary, in Beneficiary's sole discretion, sell, transfer, or otherwise convey the Property or any interest therein, voluntarily or involuntarily, or agree to do any of the foregoing without first repaying in full the Note and all other sums secured hereby.

4.14 Information for Participants, Etc. Trustor agrees to furnish such information and confirmation as may be required from time to time by Beneficiary on request of potential loan participants and assignees and agrees to make adjustments in this Trust Deed, the Note, and the other documents evidencing or securing the loan secured hereby to accommodate such participant's or assignee's requirements, provided that such requirements do not vary the economic terms of the loan secured hereby. Trustor hereby authorizes Beneficiary to disclose to potential participants and assignees any information in Beneficiary's possession with respect to Trustor and the loan secured hereby.

4.15 Trustor Existence. If Trustor is a corporation, partnership, limited liability company or other entity, Beneficiary is making this loan in reliance on Trustor's continued existence, ownership and control in its present form. Trustor will not alter its

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name, jurisdiction of organization, structure, ownership or control without the prior written consent of Beneficiary and will do all things necessary to preserve and maintain said existence and to ensure its continuous right to carry on its business. If Trustor is a partnership, Trustor will not permit the addition, removal or withdrawal of any general partner without the prior written consent of Beneficiary. The withdrawal or expulsion of any general partner from Trustor partnership shall not in any way affect the liability of the withdrawing or expelled general partner hereunder or on the Note.

4.16 Tax and Insurance Reserves. In addition to the payments required by the Note, Trustor agrees to pay Beneficiary, at Beneficiary's request, such sums as Beneficiary may from time to time estimate will be required to pay, at least thirty (30) days before due, the next due taxes, assessments, insurance premiums, and similar charges affecting the Property, less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such taxes, assessments, and premiums will become delinquent, such sums to be held by Beneficiary without interest or other income to Trustor to pay such taxes, assessments, and premiums. Should this estimate as to taxes, assessments, and premiums prove insufficient, Trustor upon demand agrees to pay Beneficiary such additional sums as may be required to pay them before delinquent.

If the total of the above-described payments in any one year shall exceed the amounts actually paid by Beneficiary for taxes, assessments, and premiums, such excess may be credited by Beneficiary on subsequent payments under this section. If there shall be a default hereunder for which Beneficiary elects to realize upon this Trust Deed, then at any time after default and prior to the trustee's sale or sheriff's sale, Beneficiary may apply any balance of funds it may hold pursuant to this Section 4.16 to any amount secured by this Trust Deed and in such order as Beneficiary may elect. If Beneficiary does not so apply such funds at or prior to the trustee's sale or sheriff's sale, the purchaser at such sale shall be entitled to all such funds. If Beneficiary acquires the Property in lieu of realizing on this Trust Deed, the balance of funds it holds shall become the property of Beneficiary.

Any transfer in fee of all or a part of the Property shall automatically transfer to the grantee all or a proportionate part of Trustor's rights and interest in the fund accumulated hereunder.

4.17 Leases.

(a) Trustor shall not receive or collect any rents from any present or future tenant of the Property or any part thereof in advance in excess of one (1) month's rent or collect a security deposit in excess of two (2) months' rent.

(b) Trustor shall promptly deposit and maintain all security deposits or other deposits received by Trustor from tenants in a segregated trust account in a

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federally insured bank or savings and loan association and shall notify and direct in writing each and every present or future tenant or occupant of the Property or any part thereof that any security deposit or other deposit heretofore delivered to Trustor has been retained by Trustor or assigned and delivered to Beneficiary as the case may be.

4.18 Indemnity - Hazardous Waste.

4.18.1 Trustor represents and covenants that (i) Trustor has not caused or suffered to occur, and Trustor will not hereafter cause or suffer to occur, a Release (as defined in the Security Agreement), discharge, spillage, uncontrolled loss, seepage or filtration (hereinafter a "Spill") of oil or petroleum or chemical liquids or solids, liquid or gaseous products or Hazardous Substance (as such term is defined below), at, upon, under or within the Property or any contiguous real estate; (ii) neither Trustor nor any other party has been, is or will be involved in operations at or near the Property which could lead to the imposition on Trustor or any other owner of the Property of liability or the creation of an Environmental Lien or other Lien on the Property, under Environmental Laws; and (iii) Trustor has not permitted and will not permit any tenant or occupant of the Property to engage in any activity that could lead to the imposition of liability on such tenant or occupant, Trustor or any other owner of any of the Property, or the creation of an Environmental Lien or other Lien on the Property, under any Environmental Laws.

4.18.2 Trustor shall comply strictly and in all respects with the requirements of all applicable Environmental Laws, including but not limited to performing all required Remediation (as defined in the Security Agreement) required by and shall notify Beneficiary promptly in the event of any Spill or Hazardous Substance upon the Property and shall promptly forward to Beneficiary copies of all orders, notices, permits, applications, or other communications and reports in connection with any such Spill or any other matters relating to Environmental Laws as they may affect the Property.

4.18.3 Whenever Beneficiary shall have cause to do so, Trustor, promptly upon the written request of Beneficiary from time to time, shall provide Beneficiary with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to Beneficiary.

4.18.4 Trustor shall indemnify Beneficiary and hold Beneficiary harmless from and against all Environmental Claims, Environmental Losses, Releases, Remediation, and against all Environmental Liens (as such terms are defined in the Security Agreement) and any other loss, liability, damage and expense, including without limitation, attorney's fees suffered or incurred by Beneficiary, whether as holder of this Trust Deed, as mortgagee-in-possession or as successor in interest to Trustor as owner of the Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of any Environmental Law, including the assertion of any lien thereunder, (ii) with respect to

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any Spill or Hazardous Substance affecting the Property whether or not the same originates or emanates from the Property or any contiguous real estate, including any loss of value of the Property as a result of a Spill or Hazardous Substance; and (iii) with respect to any other matter affecting the Property within the jurisdiction of any Governmental Authority.

4.18.5 In the event of any Spill or Hazardous Substance affecting the Property, whether or not the same originates or emanates from the Property or any contiguous real estate, and/or if Trustor shall fail to comply with any of the requirements of the applicable Environmental Laws, Beneficiary may, at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Property and/or take any and all other actions as Beneficiary shall deem, in Beneficiary's sole, absolute, and unreviewable discretion, necessary or advisable in order to remedy said Spill or Hazardous Substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate as defined in the Security Agreement from the date of payment by Beneficiary, shall be immediately due and payable by the Trustor to Beneficiary and until paid shall be added to and become a part of the Secured Obligations and shall have the benefit of the lien hereby created as a part hereof.

4.18.6 As used herein, the term "Hazardous Substance" means any substance, material, or waste which is or becomes regulated as a pollutant or as hazardous, toxic, acutely hazardous, acutely toxic, or deleterious by any Governmental Authority or under any Environmental Law. The term Hazardous Substance includes, without limitation, any material or substance that is (i) defined as a hazardous or toxic substance or as a pollutant under any city, county, state or federal law, regulation or ordinance, (ii) oil and petroleum, and products or byproducts thereof, (iii) asbestos and asbestos containing materials, (iv) radioactive, explosive or flammable, (v) polychlorinated biphenyls, (vi) mold or similar fungal growth (of such types and amounts sufficient to create a health risk to humans); (vii) designated as a "hazardous substance" pursuant to § 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321), (viii) defined as a "hazardous waste" pursuant to § 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), (ix) defined as a "hazardous substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. § 6991, et seq.); (x) defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), or (xi) regulated under the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), as such laws, regulations and ordinances may be amended from time to time and including all regulations promulgated pursuant thereto, and includes all such substances regulated under State analogs of the foregoing laws, and includes any other substance defined as a Hazardous Substance under the Security Agreement or any other Loan Document. The term "Environmental Law(s)" as used herein shall include, without limitation, any and all present and future local, State, and Federal laws, rules, regulations, and ordinances, common law duties, and Legal Requirements and Applicable Laws (as such terms are defined herein) that now or hereafter regulate or pertain to Hazardous Substances, or any Spill, disposal, or management thereof, or pertaining to

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human health, natural resources or the environment, including but not limited to the statutes listed above in this subsection (f), and the Emergency Planning and Community-Right-to-Know Act (42 U.S.C. §11001 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and laws relating to Lead Based Paint, and includes the regulations promulgated pursuant to said laws, all as amended from time to time, relating to or affecting the Property, whether or not caused by or within the control of Trustor, and includes any other such law defined as an Environmental Law under the Security Agreement or any other Loan Document.

The representations, warranties, covenants, agreements and indemnities in this Trust Deed concerning Hazardous Substances and Environmental Laws are in addition to and not in lieu of any representations, warranties, covenants, agreements and indemnities as to such matters under the Security Agreement or under any separate environmental indemnity agreement given by Trustor or any other person in favor of Beneficiary.

4.19 **Beneficiary's Costs and Expenses; Governmental Charges.**

Trustor shall pay all costs, fees and expenses of Beneficiary, its agents and counsel in connection with the performance of its duties hereunder, including without limitation the cost of any foreclosure sale, guaranty, or title insurance coverage ordered in connection with any foreclosure proceedings hereunder, and shall pay all Impositions (as defined in the Security Agreement) and other taxes (except federal and state income taxes) or other governmental charges or impositions imposed by any Governmental Authority on Beneficiary by reason of its interest in the Loan Documents or this Trust Deed.

4.20 **Trustor Not Released.** Extension of the time for payment indebtedness or obligations or modification of the terms of payment or performance of any indebtedness or obligation secured by this Trust Deed granted by Beneficiary shall not operate to release, in any manner, the liability of Trustor for such indebtedness or obligations.

4.21 **Full Recourse.** All of the terms and provisions of this Trust Deed are full recourse obligations of Trustor and are not restricted by any limitation on personal liability provided in any of the other Loan Documents or the Idaho Loan Documents or limited to any other collateral securing any of the Secured Obligations under this Trust Deed or the Idaho Loan Documents, it being the intent of Beneficiary to create separate obligations of Trustor hereunder which can be enforced against Trustor without regard to the existence of other Loan Documents or other Idaho Loan Documents or the liens or security interests created therein.

4.22 **Trustor's Payments.**

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4.22.1 (a) Trustor shall pay or reimburse Beneficiary for all expenses incurred by Beneficiary before and after the date of this Trust Deed with respect to any and all transactions contemplated by this Trust Deed including, without limitation, the preparation of any document reasonably required hereunder or any amendment, modification, restatement or supplement to this Trust Deed, the delivery of any consent, non-disturbance agreement or similar document in connection with this Trust Deed or the enforcement of any of Beneficiary's rights. Such expenses shall include, without limitation, all title and conveyancing charges, recording and filing fees and taxes, mortgage taxes, intangible personal property taxes, escrow fees, revenue and tax stamp expenses, insurance premiums (including title insurance premiums), title search and title rundown charges, brokerage commissions, finders' fees, placement fees, court costs, surveyors', photographers', appraisers', architects', engineers', consulting professionals', accountants' and attorneys' fees and disbursements. Trustor acknowledges that from time to time Trustor may receive statements for such expenses, including, without limitation, attorneys' fees and disbursements. Trustor shall pay such statements promptly upon receipt.

Without limiting any other provisions herein, Trustor also shall pay to Beneficiary and reimburse Beneficiary for any and all costs and expenses paid and incurred by Beneficiary in Beneficiary's exercise of its rights under this Trust Deed, including but not limited to Beneficiary's actions taken with respect to this Trust Deed, with respect to the Property, and actions taken on behalf of Trustor, whether by power of attorney or not and whether in Trustor's name or Beneficiary's name, all of which actions taken by Beneficiary shall be at Trustor's sole cost and expense and all such costs and expenses incurred by and sums owing to Beneficiary shall be and become part of the Secured Obligations.

4.22.2 (b) If (i) any sale (or any prerequisite to a sale), action or proceeding shall be commenced by Beneficiary (including, but not limited to, any sale of the Property, or any action to foreclose this Trust Deed or to collect the amounts owed by Trustor to Beneficiary secured hereby) or any action or proceeding is commenced to which Beneficiary is made a party, or in which it becomes necessary to defend or uphold the rights granted by this Trust Deed (including, without limitation, any proceeding or other action relating to the bankruptcy, insolvency or reorganization of Trustor, or in which Beneficiary is served with any legal process, discovery notice or subpoena) and (ii) in each of the foregoing instances, such action or proceeding in any manner relates to or arises out of this Trust Deed or Beneficiary's lending to Trustor or acceptance of a guaranty from a Guarantor of the amounts owed by Trustor to Beneficiary secured hereby or of any of the obligations or any of the transactions contemplated by this Trust Deed, then Trustor will immediately reimburse or pay to Beneficiary all of the expenses which have been or may be incurred by Beneficiary with respect to the foregoing (including counsel fees and disbursements), together with interest thereon at the Default Rate, and any such sum and the interest thereon shall be included in the indebtedness secured by this Trust Deed and have the full benefit of this Trust Deed, prior to any right, or title to, interest in or claim upon the Property attaching

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or accruing to this Trust Deed, and shall be deemed to be secured by this Trust Deed. In any action or proceeding to sell the Property, to foreclose this Trust Deed, or to recover or collect the indebtedness secured by this Trust Deed, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

4.22.3 (c) Trustor shall indemnify and hold harmless Beneficiary and each of its affiliates, and the respective directors, officers, agents and employees of Beneficiary and each of its affiliates from and against all claims, damages, losses and liabilities (including, without limitation, attorneys' fees and expenses) arising out of or based upon any matter, including at any time during or after foreclosure or while Beneficiary is or is deemed a mortgagee in possession, related to this Trust Deed, the Property or the occupancy, ownership, maintenance or management of the Property by Trustor, except for acts of gross negligence and/or willful misconduct, including, without limitation, any claims based on the alleged acts or omissions of any employee or agent of Trustor. This indemnification shall be in addition to, and shall not alter, reduce or supersede, any other liability or duty to indemnify which Trustor may otherwise have to Beneficiary. This indemnification obligation and all other indemnification obligations of Trustor hereunder and under any Loan Document or separate agreement shall survive the payment of the Secured Obligations and any foreclosure of this Trust Deed.

5. DEFAULT

5.1 Definition. Any of the following shall constitute an "Event of Default" as that term is hereinafter used:

(a) Any representation or warranty made by or for the benefit of Trustor herein or elsewhere in connection with the loan secured hereby, including but not limited to any representations in connection with the security therefor, shall prove to have been incorrect or misleading in any material respect;

(b) Trustor or any other person or entity liable therefor shall fail to pay when due any indebtedness secured hereby;

(c) Trustor or any other signatory thereto shall default in the performance of any covenant or agreement contained in this Trust Deed, the Note, or any other agreement securing, or executed in connection with, the indebtedness secured hereby (the "Loan Documents");

(d) Trustor or any other person or entity liable for the repayment of the indebtedness secured hereby shall become unable or admit in writing its inability to pay its debts as they mature, or file, or have filed against it, a voluntary or involuntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or become the subject of any other receivership or insolvency proceeding;

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(e) Trustor or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage or trust deed encumbering the Property, or the note or any other agreement evidencing or securing the indebtedness evidenced thereby;

(f) A tax, charge, or lien shall be placed upon or measured by the Note, this Trust Deed, or any obligation secured hereby that Trustor does not or may not legally pay in addition to the payment of all principal and interest as provided in the Note;

(g) There shall occur any default under any certificate and indemnity agreement regarding hazardous substances executed by Trustor in favor of Beneficiary; or,

(h) Trustor or any other signatory thereto shall default in the due, prompt, complete observance and performance of the Idaho Obligations, covenants, or terms contained in the note, security agreement or other loan documents (collectively, the "Idaho Loan Documents") relating to the loan made by Lender of even date herewith to the LLC in the amount of \$2,400,000.00.

(i) If any of the Property is damaged or destroyed by an uninsured casualty and Trustor does not immediately provide funds for the restoration of the damage caused by such casualty, as provided hereunder.

(j) **Cross Default:** Without limiting any other Event of Default hereunder or under any other Loan Document, it is expressly intended that a Default or an Event of Default under the Note, this Trust Deed, the Security Agreement, or any other Loan Document shall also constitute and shall be a Default and an Event of Default under the Idaho Loan Documents and that a Default or an Event of Default under the Idaho Loan Document also shall constitute and shall be a Default and an Event of Default under the Note, the Security Agreement, this Trust Deed, and the other Loan Documents. Wherever an action or provision in this Trust Deed is conditioned upon there being no Event of Default hereunder, such condition shall mean that no Event of Default shall have occurred and exist under any of the Loan Documents or under any of the Idaho Loan Documents.

(k) Except as otherwise provided herein, the sale, exchange, conveyance, transfer, disposition, assignment, lease, sublease or further encumbering of any legal or beneficial interest in the Property, or any part thereof, or any interest therein, either voluntarily, involuntarily, or otherwise, or agreement so to do, without the prior written consent of Beneficiary. A "sale or transfer" means, without limitation, a conveyance of the Property, or any legal or beneficial right, title or interest therein; whether legal or equitable; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest, or by any other method of conveyance of any real property interest.

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5.2 Beneficiary's and Trustee's Right to Perform. Upon the occurrence of any Event of Default, Beneficiary or Trustee, but without the obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligations hereunder, may: make any payments or do any acts required of Trustor hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in, and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses, employ counsel, and pay all fees therefor. All sums so expended shall be payable on demand by Trustor, be secured hereby and bear interest at the Default Rate of interest specified in the Note from the date advanced or expended until repaid.

Beneficiary or Trustee in making any payment herein is hereby authorized, in the place and stead of Trustor, in the case of a payment of taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the Property, to make such payment in reliance on any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement, or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; in the case of any apparent or threatened adverse claim, of title, lien, statement of lien, encumbrance, trust deed, claim, or charge Beneficiary or Trustee, as the case may be, shall be the sole judge of the legality or validity of same; and in the case of a payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion of Trustee or Beneficiary, as the case may be, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, provided further, that in connection with any such advance, Beneficiary at its option may and is hereby authorized to obtain a continuation report of title prepared by a title insurance company, the cost and expenses of which shall be repayable by Trustor without demand and shall be secured hereby.

5.3 Remedies on Default. Upon the occurrence of any Event of Default all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Beneficiary and Beneficiary may:

(a) Have a receiver appointed as a matter of right on an ex parte basis without notice to Trustor and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and, without the necessity of posting any bond or other security, such receiver shall take possession and control of the Property and shall collect and receive all of the rents, issues, and profits thereof;

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(b) Foreclose this Trust Deed as a mortgage or otherwise realize upon the Property;

(c) Cause Trustee to exercise its power of sale; or

(d) Avail itself of any other right or remedy available to it under the terms of this Trust Deed, the other Loan Documents (as defined below), the Idaho Loan Documents, or applicable law.

5.4 **No Waiver.** By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare an Event of Default for failure to do so.

5.5 **Waiver of Marshaling, Etc.** In connection with any trustee's sale or other foreclosure sale under this Trust Deed, Trustor hereby waives, for itself and all others claiming by, through or under Trustor, any right Trustor or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 **Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Trust Deed shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Trust Deed or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently, or successively. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver of any default shall not constitute a waiver of any subsequent or other default. Beneficiary shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the loan proceeds hereof.

5.7 **Cross Default.** A default or Event of Default hereunder shall constitute a default under each of the other Loan Documents and the Idaho Obligations, and a default or Event of Default under any of the other Loan Documents or any of the Idaho Obligations, shall constitute an Event of Default hereunder.

6. **CONDEMNATION.** Any award of damages, whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property, for public or private use, or for injury to any portion of the Property is hereby assigned and shall be paid to Beneficiary which may apply such moneys received by it in the same manner and with the same effect as provided in Section 4.4.6 above for disposition of proceeds of hazard insurance, provided that if the taking results in a loss of the Property to an extent which, in the sole opinion of Beneficiary, renders or will render the Property not economically viable or which substantially impairs Beneficiary's security

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or lessens to any extent the value, marketability or intended use of the Property, Beneficiary may apply the condemnation proceeds to reduce the unpaid indebtedness secured hereby in such order as Beneficiary may determine, and without any adjustment in the amount of installments due under the Note. If so applied, any proceeds in excess of the unpaid balance of the Note and other sums due to Beneficiary shall be paid to Trustor or Trustor's assignee. Beneficiary shall in no case be obligated to see to the proper application of any amount paid over to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Should the Property or any part or appurtenance thereof or right or interest therein be taken or threatened to be taken by reason of any public or private improvement, condemnation proceeding (including change of grade), or in any other manner, Beneficiary may, at its option, commence, appear in and prosecute, in its own name, any action or proceeding, or make any compromise or settlement in connection with such taking or damage, and obtain all compensation, awards or other relief therefor, and Trustor agrees to pay Beneficiary's costs and attorneys' fees incurred in connection therewith. No condemnation award at any time assigned to or held by Beneficiary shall be deemed to be held in trust, and Beneficiary may commingle such award with its general assets and shall not be liable for the payment of any interest thereon.

7. TRUSTEE

7.1 General Powers and Duties of Trustee. At any time or from time to time, without liability therefor and without notice and without affecting the liability of any person for the payment of the indebtedness secured hereby, upon written request of Beneficiary, payment of its own fees and presentation of this Trust Deed and the Note for endorsement (in case of full reconveyance, for cancellation or retention) or presentation of other evidence that the obligations secured hereby have been satisfied, Trustee may:

- (a) Consent to the making of any map or plat of the Property,
- (b) Join in granting any easement or creating any restriction thereon,
- (c) Join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof, or
- (d) Reconvey, without warranty, all or any part of the Property.

7.2 Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Deed and the Note (or other evidence that the obligations secured hereby have been satisfied) to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in any reconveyance executed under this Trust Deed of any matters of fact shall be conclusive proof of the truthfulness thereof.

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The grantee in such reconveyance may be described as "the person or persons entitled thereto."

7.3 **Powers and Duties on Default.** Upon written request therefor by Beneficiary specifying the nature of the default, or the nature of the several defaults, and the amount or amounts due and owing, Trustee shall execute a written notice of default and of its election to cause the Property to be sold to satisfy the obligation secured hereby, and shall cause such notice to be recorded and otherwise given according to law.

Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, Trustee, without demand on Trustor, shall sell the Property at the time and place of sale specified in the notice, as provided by statute, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Trustor agrees that such a sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Property that may be personal property Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the UCC. Whenever notice is permitted or required hereunder or under the UCC, ten (10) days shall be deemed reasonable. Trustee may postpone sale of all or any portion of the Property, and from time to time thereafter may postpone such sale, as provided by statute. Trustee shall deliver to the purchaser its deed and bill of sale conveying the Property so sold, but without any covenant or warranty, express, or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person other than Trustee, including Trustor or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of this trust, including the cost of evidence of title search, title insurance, and reasonable counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums secured hereby in such order as Beneficiary may determine, and the remainder, if any, to the person or persons entitled thereto or Trustee, in its discretion, may deposit the balance of such proceeds with the county clerk of the county in which the sale took place.

7.4 **Reassignment of Security Interest.** At the request of Beneficiary, Trustee shall reassign to Beneficiary the security interest created hereby and after such reassignment Beneficiary shall have the right, upon the occurrence or continuance of any Event of Default, to realize upon the personal property subject to this Trust Deed, independent of any action of Trustee, pursuant to the UCC.

7.5 **Acceptance of Trust.** Trustee accepts this trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not

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obligated to notify any party hereto except Beneficiary of pending sale under any other trust deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

7.6 Reliance. Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Trustor under this Trust Deed, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

7.7 Replacement of Trustee. Beneficiary may, from time to time, as provided by statute, appoint another trustee in place and stead of Trustee herein named, and thereupon Trustee herein named shall be discharged and the trustee so appointed shall be substituted as Trustee hereunder, with the same effect as if originally named Trustee herein.

8. NOTICES

8.1 Trustee. Any notice or demand upon Trustee may be given or made at the address set forth above for Trustee.

8.2 Trustor and Beneficiary. Any notice to or demand upon Trustor (including any notice of default or notice of sale) or notice to or demand upon Beneficiary shall be deemed to have been sufficiently made for all purposes when deposited in the United States mails, postage prepaid, registered or certified, return receipt requested, addressed to Trustor at its address set forth above or to Beneficiary at the following address:

CHARTER OAK REAL ESTATE FUND, LLC
38C Grove Street
Ridgefield, CT 06877
Attention: Mr. Robert Hebert

or to such other address as the recipient may have directed by notice in accordance herewith.

8.3 Waiver of Notice. The giving of notice may be waived in writing by the person or persons entitled to receive such notice, either before or after the time established for the giving of such notice.

9. MODIFICATIONS. Upon written request of any party then liable for any sum secured hereby, Beneficiary reserves the right to extend the term, or otherwise modify the terms, hereof or of the Note as Beneficiary and such person may from time to time deem appropriate and any such change shall not operate to release, in any manner, the liability of the original Trustor or Trustor's successors in interest.

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10. **SUCCESSORS AND ASSIGNS.** Without limiting any restriction or prohibition on assignments or conveyances herein or under the Security Agreement, all of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors and assigns of Trustor and the endorsees, transferees, successors and assigns of Beneficiary. In the event Trustor is composed of more than one party, the obligations, covenants, agreements and warranties contained herein, as well as the obligations arising therefrom, are and shall be joint and several as to each such party.

11. **GOVERNING LAW; SEVERABILITY.** This Trust Deed shall be governed by the law of the State of Utah. In the event that any provision or clause of this Trust Deed or the Note conflicts with applicable law, the conflict shall not affect other provisions of this Trust Deed or the Note that can be given effect without the conflicting provision and to this end the provisions of this Trust Deed and the Note are declared to be severable.

12. **TRUSTOR'S RIGHT TO POSSESSION.** Trustor may be and remain in possession of the Property for so long as it is not in default hereunder or under the terms of the Note and Trustor may, while it is entitled to possession of the Property, use the same.

13. **MAXIMUM INTEREST.** No provision of this Trust Deed or of the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein or in the Note provided for, neither Trustor nor its successors or assigns shall be obligated to pay that portion of such interest that is in excess of the maximum permitted by law, and the right to demand the payment of any such excess shall be and is hereby waived and this Section 14 shall control any provision of this Trust Deed or the Note that is inconsistent herewith.

14. **ATTORNEYS' FEES AND LEGAL EXPENSES.** In the event of any default under this Trust Deed, or in the event that any dispute arises relating to the interpretation, enforcement, or performance of any obligation secured by this Trust Deed, Beneficiary shall be entitled to collect from Trustor on demand all fees and expenses incurred in connection therewith, including but not limited to fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators, and court reporters. Without limiting the generality of the foregoing, Trustor shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions, and appeals; (b) bankruptcy or other insolvency proceedings of Trustor, any guarantor or other party liable for any of the obligations secured by this Trust Deed, or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) postjudgment collection proceedings; (e) all claims, counterclaims, cross-claims, and defenses asserted in any of the foregoing whether or not they arise out of

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or are related to this Trust Deed; (f) all preparation for any of the foregoing, and (g) all settlement negotiations with respect to any of the foregoing.

15. **Intentionally left blank.**

16. **TIME IS OF THE ESSENCE.** Time is of the essence under this Trust Deed and in the performance of every term, covenant, and obligation contained herein.

17. **FIXTURE FILING.** This Trust Deed constitutes a financing statement, filed as a fixture filing in the real estate records of the county of the state in which the real property described in Exhibit A is located, with respect to any and all fixtures included within the list of improvements and fixtures described in Section 1.2 of this Trust Deed and to any goods or other personal property that are now or hereafter will become a part of the Property as fixtures.

18. **MISCELLANEOUS**

18.1 Wherever used in this Trust Deed, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Trustor" shall mean and include both Trustor and any subsequent owner or owners of the Property, and the word "Beneficiary" shall mean and include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Trust Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural and conversely. In this Trust Deed, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not non-limiting language (such as "without limitation" or "but not limited" or words of similar import) is used with reference thereto. The captions and pleadings of the Articles and Sections of this Trust Deed are for convenience only and are not to be used to interpret, define or limit the provisions hereof. Any capitalized term used herein and not defined herein shall have the meaning given such term under the Security Agreement.

18.2 This Trust Deed, the Note, and the other documents, instruments, and agreements entered into by Trustor and Beneficiary in connection therewith (collectively, the "Loan Documents") constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. The Loan Documents may not be amended or modified except by means of a written document executed by the party sought to be charged with such amendment or modification.

19. **WAIVER OF JURY TRIAL. EACH OF THE TRUSTOR AND THE**

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EXHIBIT "A"

PARCEL NO. 1: Tax Parcel No. 22-01-405-043

Lot 203, BALSAM RIDGE PARK PHASE II, according to the official plat thereof, filed in Book "92-4" of Plats, at Page 62 of the Official Records of the Salt Lake County Recorder.

PARCEL NO. 2:

A non-exclusive easement for ingress and egress purposes, appurtenant to Parcel 1, over the following described area:

Beginning at a point being South 0°07' West 3,635.29 feet and East 495.70 feet from the North quarter corner of Section 1, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 51°00' East 160.84 feet to Abinadi Road; thence Northwesterly along the arc of a 50 foot radius curve to the right, chord bears North 9°34' West 40.18 feet, a distance of 41.36 feet; thence South 51°00' West 20.00 feet; thence South 6°00" West 14.14 feet; thence South 51°00' West 150.59 feet; thence South 39°00' East 25.00 feet to the point of beginning.

PARCEL NO. 3:

A non exclusive easement for ingress, egress and incidental purposes as established and shown on the recorded plat of BALSAM RIDGE PARK PHASE II, according to the official plat thereof, filed in Book "92-4" of Plats, at Page 62 of the Official Records of the Salt Lake County Recorder.

PARCEL NO. 4: Tax Parcel No. 22-01-405-039

Beginning at the Westernmost corner of Lot 1, BALSAM RIDGE PARK PHASE 1, according to the official plat thereof on file and of record in the Salt Lake County Recorder's Office; and running thence North 39°00' West 33.00 feet; thence North 51°00' East 190.59 feet; thence South 12°18' West 52.78 feet; thence South 51°00' West 149.39 feet to the point of beginning.