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Gary W. Ott  
Recorder, Salt Lake County, UT  
NATIONAL TITLE AGCY OF UT INC  
BY: eCASH, DEPUTY - EF 41 P.

**WHEN RECORDED MAIL TO:**

**JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, 9<sup>th</sup> Floor  
Dallas, Texas 75201  
Mail Code: TX1-2951  
Attention: Francisca Wilson**

**Tax Parcel Nos. (May be changed upon final replat)**

1) NORTH TEMPLE FLATS (Tax Parcel Nos. 08-34-353-022-0000, 08-34-353-023-0000, 08-34-353-046-0000, 08-34-353-047-0000, 15-03-101-017-0000, 08-34-353-048-0000)

NTIA 16-09-01 ATN

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

THIS DEED OF TRUST SECURES AN ADVANCE PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH VARIES ACCORDING TO CHANGES IN THE PRIME RATE OR OTHER VARIABLE RATES SET FORTH IN THE ADVANCE PROMISSORY NOTE MADE PAYABLE BY TRUSTOR TO THE ORDER OF BENEFICIARY.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE 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." TRUSTOR IS THE RECORD OWNER OF THE PROPERTY.

THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE" WITHIN THE MEANING OF UTAH CODE ANNOTATED SECTION 70A-9a-334(8). THE PROCEEDS OF THE LOAN SECURED BY THIS DEED OF TRUST ARE TO BE USED BY TRUSTOR IN PART FOR THE PURPOSE OF FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF THE LAND AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN DOCUMENTS (AS HEREINAFTER DEFINED).

By this agreement (this "**Deed of Trust**"), dated effective as of December 30, 2016, the undersigned, NORTH TEMPLE FLATS, LLC, a Utah limited liability company ("**Trustor**" whether one or more), whose address for the purpose of this Deed of Trust is 283 Front Street, Suite 1, Missoula, Montana 59802, to secure the indebtedness and obligations hereinafter described, does hereby GRANT, BARGAIN, SELL, ASSIGN and CONVEY unto NATIONAL TITLE AGENCY OF UTAH, INC., whose address is 175 South Main Street, Walker Center Building, Suite 620, Salt Lake City, Utah 84111 ("**Trustee**"), in trust with power of sale and right of entry and possession for the benefit of "**Beneficiary**" (as defined in Section 1.1 below), its right, title, and interest in and to the land (the "**Land**") described in Exhibit "A" attached hereto and made a part hereof for all purposes, TOGETHER WITH the following, whether now owned or hereafter acquired by Trustor: (a) all improvements now or hereafter attached to or placed, erected, constructed or developed on the Land (the "**Improvements**"); (b) all right, title, and interest of Trustor in and to all fixtures and articles of personal property (the "**Personal Property**") now or hereafter attached to or used in or about the Improvements or that are necessary or useful for the complete and comfortable use and occupancy of the Improvements for the purposes for which they were or are to be attached, placed, erected, constructed or developed, or which Personal Property is or may be used in or related to the planning, development, financing or operation of the Improvements, and all renewals of or replacements or substitutions for any of the foregoing, whether or not the same are or shall be attached to the Land or Improvements; (c) all right, title, and interest of Trustor in and to all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, reservoirs and reservoir rights appurtenant or associated with the Mortgaged Property, whether decreed or undecreed, tributary, non-tributary, surface or underground or appropriated or unappropriated, all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of such rights, timber, crops, and mineral interests pertaining to the Land and/or the Improvements; (d) all right, title, and interest of Trustor in and to all building materials and equipment now or hereafter delivered to and intended to be installed in or on the Land or the Improvements; (e) all right, title, and interest of Trustor in and to all plans and specifications for the Improvements; (f) to the extent such rights are assignable, all Trustor's rights (but not its obligations) under any contracts relating to the Land (including sales contracts and purchase options), the Improvements or the Personal Property; (g) all deposits (including tenants' security deposits), bank accounts, funds, instruments, note or chattel paper arising from or by virtue of any transactions related to the Land, the Improvements or the Personal Property; (h) to the extent such rights are assignable, all Trustor's rights (but not its obligations) under any documents, contract rights, accounts, permanent loan and other commitments, construction contracts, engineering contracts, architectural and design agreements, environmental site assessments and soils tests, and general intangibles (including, without limitation, trademarks, tradenames and symbols) arising from or by virtue of any transactions related to the Land, the Improvements or Personal Property; (i) all right, title, and interest of Trustor in and to all permits, licenses, franchises, certificates, and other rights

and privileges obtained in connection with the Land, the Improvements and the Personal Property (including, without limitation, any form of reservation for utility capacity that may be granted by any governmental subdivision); (j) all proceeds arising from or by virtue of the sale, lease or other disposition of the Land, the Improvements or the Personal Property; (k) all proceeds (including premium refunds) of each policy of insurance relating to the Land, the Improvements or the Personal Property; (l) all proceeds from the taking of any of the Land, the Improvements, the Personal Property or any rights appurtenant thereto by right of eminent domain or by private or other purchase in lieu thereof, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law; (m) all right, title and interest of Trustor in and to all streets, roads, public places, easements and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Land, (n) all right, title, and interest of Trustor in and to all of the leases, rents, royalties, bonuses, issues, profits, revenues or other benefits of the Land, the Improvements or the Personal Property, including without limitation, cash or securities deposited pursuant to leases to secure performance by the lessees of their obligations thereunder; (o) all right, title, and interest of Trustor in and to all consumer goods located in, on or about the Land, or the Improvements or used in connection with the use or operation thereof; (p) all rights, hereditaments and appurtenances pertaining to the foregoing; (q) all right, title, and interest of Trustor in and to any Low-Income Housing Tax Credit (as that term is used in Section 42 of the Internal Revenue Code of 1986, as amended, and in Section 59-7-607 and/or Section 59-10-1010 of the Utah Code, as amended) relating to the Mortgaged Property and the use thereof; and (r) all right, title, and interest in all supporting obligations relating to any of the Mortgaged Property. All of the foregoing is collectively referred to herein as the "**Mortgaged Property**".

TO HAVE AND TO HOLD the Mortgaged Property, subject to the permitted exceptions listed on Exhibit "B" attached hereto (the "**Permitted Exceptions**"), together with the rights, privileges and appurtenances thereto belonging unto the Trustee and his substitutes or successors, forever, and Trustor hereby binds itself and its heirs, executors, administrators, personal representatives, successors and assigns to warrant and forever defend the Mortgaged Property unto the Trustee, his substitutes or successors and assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof.

## ARTICLE 1

### INDEBTEDNESS

This Deed of Trust is given to secure the following:

1.1 **Note.** Payment of the indebtedness evidenced by the following instruments (referred to herein as the "**Note**"):

Advance Promissory Note dated of even date herewith, in the maximum principal amount of \$14,850,000.00, executed by Trustor, payable to the order of JPMorgan Chase Bank, N.A., ("**Beneficiary**") whose address is 2200 Ross Avenue, Floor 9, Mail Code TX1-2951, Dallas, Texas 75201, and all extensions, modifications, increases, restatements, replacements, substitutions, and renewals thereof made from time to time (collectively, the "**Note**"); and

1.2 Loan Agreement. Payment and performance by Trustor of all of its obligations, including all fees and other advances made thereunder, under the Credit Support and Funding Agreement of even date herewith, between Trustor and Beneficiary (as may be amended, the "**Loan Agreement**").

1.3 Deed of Trust. Payment of all sums advanced by Beneficiary to or for the benefit of Trustor contemplated hereby and performance of all obligations and covenants herein contained.

1.4 Letters of Credit. Until the assignment of this Deed of Trust to the Permanent Beneficiary, payment and performance of all reimbursement obligations of Trustor under and with respect to the Bank Letter of Credit and the City Public Improvements Letter of Credit (as each such term is defined in the Loan Agreement and herein used); it being agreed that upon the assignment of this Deed of Trust to the Permanent Beneficiary, Indebtedness shall no longer include the reimbursement obligation of Trustor under and with respect to the Bank Letter of Credit and the City Public Improvements Letter of Credit and this Deed of Trust shall no longer secure such reimbursement obligations .

The obligations above described are hereinafter collectively called the "**Indebtedness**". This Deed of Trust, the Note, the Loan Agreement, and any other instrument given to evidence or further secure, govern or guarantee the Indebtedness, are hereinafter collectively called the "**Loan Documents**." All payments on the Indebtedness shall be payable at the address of Beneficiary as set forth above and, unless otherwise provided in any instrument evidencing the Indebtedness, shall bear interest at the rate set forth in the Note, but not in excess of the highest rate permitted by applicable law, from the date of accrual of the Indebtedness until paid.

Notwithstanding anything to the contrary herein, as used in this Deed of Trust, "**Indebtedness**", includes, without limitation, the payment of any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of Trustor to Beneficiary arising under or in connection with any Rate Management Transaction. For purposes of Utah Code Annotated Section 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees, and similar amounts, if any, owing from time to time under the Note, Loan Agreement, or Deed of Trust shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Mortgaged Property and Beneficiary may add all such amounts to the principal balance to the principal balance of the Note, in its sole discretion, and Beneficiary may include such amounts in any credit which Beneficiary may make

against its bid at a foreclosure sale of the Mortgaged Property pursuant to this Deed of Trust. The occurrence of a default or event of default by Trustor in connection with any Rate Management Transaction shall constitute an Event of Default hereunder. As used herein, "**Rate Management Transaction**" means any transaction (including an agreement with respect thereto) now existing or hereafter entered into between Trustor and Beneficiary (or its affiliate) which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

In accordance with (i) that certain Forward Loan Purchase Agreement (the "**Forward Loan Purchase Agreement**") by and among Trustee, Beneficiary and Cornerstone Permanent Mortgage Fund III LLC, a Massachusetts limited liability company (together with its successors, assignees and other transferees, "**Permanent Beneficiary**") and (ii) that certain Permanent Loan Agreement (the "**Permanent Loan Agreement**") by and between Trustee and the Permanent Beneficiary, Permanent Beneficiary has agreed, subject to the satisfaction of the terms and conditions set forth therein to make a permanent loan (the "**Permanent Loan**") in an amount not to exceed \$8,885,000.00 (which may be increased to \$9,000,000 as provided for in the Permanent Loan Agreement). Upon the satisfaction of the conditions set forth in the Forward Loan Purchase Agreement, upon the Funding Date (as defined in the Forward Loan Purchase Agreement) the Beneficiary shall assign all of its rights, title and interest under this Deed of Trust to the Permanent Beneficiary and the Permanent Beneficiary shall assume all of Beneficiary's rights title and interest under this Deed of Trust. From and after the Funding Date (i) all references in this Deed of Trust to "Beneficiary" shall mean the "Permanent Beneficiary" (ii) all references in this Deed of Trust to "Loan Agreement" shall mean the Permanent Loan Agreement, (iii) all references in this Deed of Trust to the "Note" shall mean the promissory note executed by the Trustee for the benefit of the Permanent Beneficiary as of the Funding Date evidencing the Trustee's obligation to repay the Permanent Loan and (iv) all references in this Deed of Trust to "Loan Documents" shall have the meaning set forth in the Permanent Loan Agreement. As of the Funding Date, in the event of a conflict between the provisions the Loan Documents and this Deed of Trust, the provisions of the Loan Documents shall prevail.

## ARTICLE 2

### ASSIGNMENT OF RENTS AND LEASES

2.1 Assignment of Rents, Profits, etc. All of the rents, royalties, bonuses, issues, profits, revenue, income, and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or

agreement pertaining thereto, and liquidated damages following default under such leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Mortgaged Property, together with any and all rights Trustor may have against any tenant under such leases or any subtenants or occupants of any part of the Mortgaged Property (hereinafter called the "**Rents**"), are hereby absolutely and unconditionally assigned to Beneficiary, to be applied by Beneficiary in payment of the Indebtedness. Notwithstanding any provision of this Deed of Trust or any other Loan Instrument which might be construed to the contrary, the assignment in this Paragraph is an absolute assignment and not merely a security interest. However, Beneficiary's rights as to the assignment shall be exercised only upon the occurrence of an Event of Default (as hereinafter defined). Prior to an Event of Default, Trustor shall have a license to collect and receive all Rents, and Trustor shall apply the funds so collected first to the payment of any amounts then due in respect of the Indebtedness and thereafter to the account of Trustor. Upon the occurrence of an Event of Default and written notice of termination of such license to Trustor from Beneficiary, such license in favor of Trustor shall automatically and immediately terminate without any action or notice, or the necessity thereof, by Beneficiary or any other party, and Beneficiary shall be entitled to immediate possession of all Rents regardless of the value of the security for the Indebtedness and regardless of whether Beneficiary has initiated any action to take possession of any portion of the Mortgaged Property. This Article 2 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et seq. (the "**Act**"), and in the event of any conflict or inconsistency between the provisions of this Article 2 and the provisions of the Act, the provisions of the Act shall control.

2.2 Assignment of Leases. Trustor hereby assigns to Beneficiary all Trustor's rights under all existing and future leases including subleases thereof, and any and all extensions, renewals, modifications, and replacements thereof, upon any part of the Mortgaged Property (the "**Leases**"). Trustor hereby further assigns to Beneficiary all guaranties of tenants' performance under the Leases. Prior to termination of such right by Beneficiary by written notice to Trustor after the occurrence of an Event of Default, Trustor shall have the right, without joinder of Beneficiary, to enforce the Leases.

2.3 Warranties Concerning Leases and Rents. Trustor represents and warrants that except as provided for in the Loan Documents:

(a) Trustor has good title to the Leases and Rents hereby assigned and authority to assign them, and no other person or entity has any right, title or interest therein;

(b) all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and to Trustor's best knowledge, no default exists thereunder;

(c) except as otherwise provided in the Loan Documents, no Rents have been or will be assigned, mortgaged or pledged;

(d) no Rents have been or will be anticipated, waived, released, discounted, set off or compromised, except in the ordinary course of business; and

(e) except as indicated in the Leases, Trustor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents.

2.4 Trustor's Covenants of Performance. Trustor covenants to:

(a) perform all of its obligations under the Leases and give prompt notice to Beneficiary of any failure to do so;

(b) give immediate notice to Beneficiary of any notice Trustor receives from any tenant or subtenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notice of defaults under residential leases;

(c) use reasonable efforts to enforce the tenants' obligations under the Leases;

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

(e) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed of Trust, the Permitted Encumbrances (as hereinafter defined) and any other encumbrances permitted by the Loan Documents.

2.5 Prior Approval for Actions Affecting Leases. Except in the ordinary course of business, Trustor shall not, without the prior written consent of Beneficiary, which will not be unreasonably withheld:

(a) receive or collect Rents (other than security deposits) more than one month in advance, except in the ordinary course of business;

(b) encumber or assign future Rents;

(c) waive or release any obligation of any tenant under the Leases except in the ordinary course of business and consistent with customary and prudent business practices;

(d) cancel, terminate or modify any of the Leases, cause or permit any cancellation, termination or surrender of any of the Leases, or commence any proceedings for dispossession of any tenant under any of the Leases, except upon default by the tenant thereunder and except in the ordinary course of business and consistent with customary and prudent business practices; or

(e) permit any assignment of the Leases, except as otherwise provided in the Loan Documents.

2.6 Settlement for Termination. Trustor agrees that no settlement for damages for termination of any of the Leases under the Federal Bankruptcy Code, or under any other federal, state, or local statute, shall be made without the prior written consent of Beneficiary, and any check in the payment of such damages shall be made payable to both Trustor and Beneficiary, except in the ordinary course of business and consistent with customary and prudent business practices. Trustor hereby assigns any such payment to Beneficiary, to be applied to the Indebtedness as Beneficiary may elect, and agrees to endorse any check for such payment to the order of Beneficiary.

2.7 Beneficiary in Possession. Beneficiary's acceptance of this assignment shall not, prior to entry upon and taking possession of the Mortgaged Property by Beneficiary, be deemed to constitute Beneficiary a "mortgagee in possession", nor obligate Beneficiary to appear in or defend any proceeding relating to any of the Leases or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Trustor by any lessee and not delivered to Beneficiary. Beneficiary shall not be liable for any injury or damage to person or property in or about the Mortgaged Property, except to the extent the same results from the gross negligence or willful misconduct of Beneficiary.

2.8 Appointment of Attorney. Trustor hereby appoints Beneficiary as its attorney-in-fact, coupled with an interest, empowering Beneficiary to subordinate Trustor's interest in any Leases to this Deed of Trust.

2.9 **INDEMNIFICATION; HOLD HARMLESS.** TRUSTOR HEREBY INDEMNIFIES AND HOLDS BENEFICIARY HARMLESS FROM ALL LIABILITY, DAMAGE OR EXPENSE INCURRED BY BENEFICIARY FROM ANY CLAIMS UNDER THE LEASES, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BY TRUSTOR WITH RESPECT TO RENTS PAID DIRECTLY TO BENEFICIARY AFTER AN EVENT OF DEFAULT (AND NOT APPLIED TO THE INDEBTEDNESS) AND CLAIMS BY TENANTS FOR SECURITY DEPOSITS OR FOR RENTAL PAYMENTS MORE THAN ONE (1) MONTH IN ADVANCE AND NOT DELIVERED TO BENEFICIARY, EXCEPT TO THE EXTENT THE SAME RESULTS FROM THE GROSS NEGLIGENCE OF WILLFUL MISCONDUCT OF BENEFICIARY. ALL AMOUNTS INDEMNIFIED AGAINST HEREUNDER, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, IF PAID BY BENEFICIARY, SHALL BEAR INTEREST AT THE LESSER OF THE PAST DUE RATE OR THE MAXIMUM RATE (AS EACH TERM IS DEFINED IN SECTION 3.3 (C) BELOW) AND SHALL BE PAYABLE BY TRUSTOR IMMEDIATELY WITHOUT DEMAND AND SHALL BE SECURED HEREBY.

2.10 Records. Upon request by Beneficiary, Trustor shall deliver to Beneficiary executed originals of all Leases and copies of all records relating thereto.



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

2.12 Right to Rely. Trustor hereby authorizes and directs the tenants under the Leases to pay Rents to Beneficiary upon written demand by Beneficiary, without further consent of Trustor, and regardless of whether Beneficiary has taken possession of any portion of the Mortgaged Property, and the tenants may rely upon any written statement delivered by Beneficiary to the tenants. Any such payment to Beneficiary shall constitute payment to Trustor under the Leases, and Trustor hereby appoints Beneficiary as Trustor's lawful attorney-in-fact for giving, and Beneficiary is hereby empowered to give, acquittances to any tenants for such payments to Beneficiary after an Event of Default.

2.13 Rents. It is the intention of Beneficiary and Trustor that the assignment effectuated by this Deed of Trust with respect to the Rents shall be a direct and currently effective assignment and shall not constitute merely the granting of a lien, security interest or pledge for the purpose of securing the Indebtedness. In the event that a court of competent jurisdiction determines that, notwithstanding such expressed intent of the parties, Beneficiary's interest in the Rents constitutes a lien on or security interest in or pledge of the Rents, it is agreed and understood that the forwarding of a notice to Trustor after the occurrence of an Event of Default, advising Trustor of the revocation of Trustor's license to collect such Rents, shall be sufficient action by Beneficiary to (i) perfect such lien on or security interest in or pledge of the Rents, (ii) take possession thereof and (iii) entitle Beneficiary to immediate and direct payment of the Rents, for application as provided in this Deed of Trust, all without the necessity of any further action by Beneficiary, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Mortgaged Property.

### ARTICLE 3

#### SECURITY AGREEMENT

3.1 Security Interest. This Deed of Trust shall be a security agreement between Trustor, as the debtor, and Beneficiary, as the secured party, covering the Mortgaged Property constituting personal property or fixtures governed by the Utah Uniform Commercial Code, §70A-1a-101 et seq., as amended (the "Utah UCC"), and Trustor grants to Beneficiary a security interest in such portion of the Mortgaged Property. In addition to Beneficiary's other rights hereunder, Beneficiary shall have all rights of a secured party under the Utah UCC. Trustor shall execute and deliver to Beneficiary all financing statements that may be required by Beneficiary to establish and maintain the validity and priority of Beneficiary's security interest, and Trustor shall bear all costs thereof, including all Utah UCC searches reasonably required by Beneficiary. If Beneficiary should dispose of any of the Mortgaged Property pursuant to the Utah UCC, ten (10) days' written notice by Beneficiary to Trustor shall be deemed to be reasonable notice; provided, however, Beneficiary may dispose of such property in

accordance with the foreclosure procedures of this Deed of Trust in lieu of proceeding under the Utah UCC.

3.2 Notice of Changes. Trustor shall give advance notice in writing to Beneficiary of any proposed change in Trustor's name, identity, state of organization, or structure and shall execute and deliver to Beneficiary, prior to or concurrently with the occurrence of any such change, all additional financing statements that Beneficiary may require to establish and maintain the validity and priority of Beneficiary's security interest with respect to any of the Mortgaged Property described or referred to herein.

3.3 Fixtures. Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Land, and it is intended that, as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Beneficiary, as secured party, at the address of Beneficiary stated above. The mailing address of Trustor, as debtor, is as stated above. It is further understood and agreed that, to protect Beneficiary against the effect of *Utah Code Annotated* Section 70A-9a-334, as amended from time to time, in the event that (x) any fixture owned by Trustor on the Property, or any part thereof, is replaced or added, or any new fixture owned by Trustor is installed by Trustor, and in each case such fixture has a cost or fair market value in excess of \$25,000.00, and (y) such fixture is or may be subject to a security interest held by a seller or any other party.

(a) Trustor shall, before the replacement, addition, or installation of any such fixture, obtain the prior written approval of Beneficiary, and give Beneficiary written notice that a security agreement with respect to such fixture has been or will be consummated, which notice shall contain the following information:

(i) a description of the fixtures to be replaced, added to, installed or substituted;

(ii) a recital of the location at which the fixtures will be replaced, added to, installed or substituted;

(iii) a statement of the name and address of the holder and amount of the security interest; and

(iv) the date of the purchase of such fixtures.

(b) Neither this subsection nor any consent by Beneficiary pursuant to this section shall constitute an agreement to subordinate any right of Beneficiary in fixtures or other property covered by this Deed of Trust.

(c) Beneficiary may, at its option, at any time, pay the balance due under said security agreement and the amount so paid shall be (i) secured by this Deed

of Trust and shall be a lien on the Mortgaged Property enjoying the same priorities *vis a vis* the estates and interests encumbered hereby as this Deed of Trust, (ii) added to the amount of the Note or other obligation secured hereby, and (iii) payable on demand with interest at the lesser of (1) the past due rate described in Section 4(c) of the Note (the "**Past Due Rate**"), or (2) the highest rate permitted by law (the "**Maximum Rate**") from the time of such payment as aforesaid; and if Trustor shall be in default thereof for ten (10) days after demand, the entire principal sum secured hereby with all unpaid interest accrued thereon shall, at the option of Beneficiary, become due and payable immediately, anything contained in this Deed of Trust or the Note to the contrary notwithstanding; or Beneficiary shall have the privilege of acquiring by assignment from the holder of said security interest any and all contract rights, accounts receivable, chattel paper, negotiable or non-negotiable instruments, or other evidence of Trustor's indebtedness for such fixtures, and, upon acquiring such interest aforesaid by assignment, shall have the right to enforce the security interest as assignee thereof, in accordance with the terms and provisions of the Utah UCC, as amended or supplemented, and in accordance with the law.

(d) Whether or not Beneficiary has paid or taken an assignment of such security interest, if at any time Trustor shall be in default for a period of ten (10) days under the security agreement covering the fixtures, such default shall be a material breach of Trustor's covenants under this Deed of Trust, and shall at the option of Beneficiary constitute a default under this Deed of Trust, and the principal sum secured thereon shall, at the option of Beneficiary, become due and payable immediately.

(e) The provisions of subsection (c) and (d) above shall not apply if the goods which may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest have been expressly subordinated, at no cost to Beneficiary, to the lien of this deed of Trust in a manner satisfactory to Beneficiary, including, without limitation, at the option of Beneficiary, providing to Beneficiary a satisfactory opinion of counsel to the effect that this Deed of Trust constitutes a valid and subsisting first lien on such fixtures which is not subordinate to the lien of such security interest under any applicable law, including, without limitation, the provisions of Section 70A-9a-334 of the Utah UCC.

3.4 **Expenses.** Expenses of retaking, holding, preparing for sale, selling or the like of the personal property shall be borne by Trustor and shall include Beneficiary's and Trustee's attorneys' fees and legal expenses. Trustor, upon demand of Beneficiary, shall assemble such personal property and make it available to Beneficiary at the Property, a place which is hereby deemed to be reasonably convenient to Beneficiary. Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such personal property or of the time of or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Trustor in the manner provided for the mailing of notices herein, it is hereby deemed such notice shall be and is reasonable notice to Trustor.

### 3.5 Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Article 8 hereof, upon the occurrence of an Event of Default hereunder, Beneficiary may, at its option, do any one or more of the following:

(i) 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;

(ii) 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;

(iii) 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 premises and property to exercise Beneficiary's rights hereunder;

(iv) 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;

(v) 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 Mortgaged Property;

(vi) 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

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code of Utah or any other applicable law.

(b) 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 herein.

(c) Subject to applicable law to the contrary, the proceeds of any sale under Section 3.5(a)(vi) shall be applied as follows:

(i) 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 reasonable 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);

(ii) To the payment of the Indebtedness in such order as Beneficiary shall determine; and

(iii) 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.

3.6 : Financing Statement. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. Certain UCC-1 financing statement information is set forth on **Exhibit C** to this Deed of Trust.

(a) Trustor's principal place of business is in the State of Utah at the address set forth in the introductory paragraph hereof. 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 any change in its place of business or the adoption or change of any trade name or fictitious business name, and hereby authorizes Beneficiary to prepare, file and record any additional financing statements or

other certificates necessary to reflect the adoption or change in trade name or fictitious business name.

(b) Trustor authorizes Beneficiary to prepare, file and record such financing statements in accordance with the applicable Uniform Commercial Code, or such other documents as may be required from time to time to create, maintain and perfect the liens and security interest granted herein. 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.

(c) Trustor hereby 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 applicable Uniform Commercial 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 applicable Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement amendment, including (1) whether Trustor is an organization, the type of organization and any organization identification number issued to 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 the 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 Beneficiary to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Beneficiary is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder.

(d) Trustor acknowledges that it is not authorized to file any financing statement or termination statement with respect to any financing statement without prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9-509(4)(b) of the applicable Uniform Commercial Code.

## ARTICLE 4

### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF TRUSTOR

Trustor does hereby covenant, warrant and represent to and agree with Beneficiary as follows:

4.1 Payment and Performance. Trustor shall make all payments on the Indebtedness owing to Beneficiary by the Trustor or when due and shall punctually and properly perform all of Trustor's covenants, obligations, and liabilities under the Loan Documents.

4.2 Title to Mortgaged Property and Lien of this Deed of Trust. Trustor has good and indefeasible title in the Land and the Improvements, and good and marketable title to the Personal Property, free and clear of any liens, charges, encumbrances, security interests, and adverse claims whatsoever, except as permitted by the terms of the Loan Agreement or as included in the list of Permitted Encumbrances in Exhibit "B" attached hereto. If the interest of Beneficiary in the Mortgaged Property or any part thereof shall be endangered or shall be attacked, directly or indirectly, Trustor hereby authorizes Beneficiary, at Trustor's expense, to take all necessary and proper steps for the defense of such interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such interest.

4.3 Insurance. Trustor shall, at its sole cost and expense, obtain and maintain (a) title insurance (in the form of a commitment, binder or policy as Beneficiary may require), (b) insurance as required by the Loan Agreement relating to all insurable Mortgaged Property by all-risk insurance policies, and, if requested by Beneficiary, shall include perils of collapse, flood and earthquake, as well as other insurance coverages, all in form and in companies acceptable to Beneficiary, in amounts equal to 100% of the replacement cost of the Improvements during the construction thereof and at least 100% of the replacement cost of the Improvements not under construction, or in such additional amounts as Beneficiary may require, with loss made payable to Beneficiary and with a standard form mortgage clause, and (c) casualty and business interruption insurance. Trustor shall deliver the policies of insurance to Beneficiary promptly as issued; and, if Trustor fails to do so, Beneficiary, at its option, may procure such insurance at Trustor's expense. All renewal and substitute policies of insurance shall be delivered at the office of the Beneficiary, premiums paid, at least ten (10) days before termination of policies theretofore delivered to Beneficiary. If any loss shall occur at any time during the occurrence of an Event of Default, Beneficiary shall be entitled to the benefit of all insurance held by or for any Trustor, to the same extent as if it had been made payable to Beneficiary, and upon foreclosure hereunder, Beneficiary shall become the owner thereof.

4.4 Taxes and Assessments. Trustor shall pay all taxes and assessments against or affecting the Mortgaged Property as the same become due and payable, and, upon request by Beneficiary, Trustor shall deliver to Beneficiary such evidence of the payment thereof as Beneficiary may require, and if Trustor fails to do so, Beneficiary may pay them, together with all costs and penalties thereon, at Trustor's expense; provided, however, Trustor may in good faith, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings, contest the validity thereof. Pending such contest, Trustor shall not be deemed in default hereunder because of such nonpayment if, prior to delinquency of the asserted tax or assessment, Trustor furnishes Beneficiary an indemnity bond secured by a deposit in cash or other security acceptable to Beneficiary, or with a surety acceptable to Beneficiary, in the amount of the tax or assessment being contested by Trustor plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, conditioned that such tax or assessment, with interest, cost and penalties, be paid as herein stipulated, and if Trustor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, on or before the date such judgment becomes final; provided that in any event the tax, assessment, penalties, interest and costs shall be paid prior to the date on which any writ or order is issued under which the Mortgaged Property may be sold in satisfaction thereof.

4.5 Tax and Insurance Escrow. At the request of Beneficiary, which request shall only be made after the occurrence of an Event of Default, Trustor shall create a fund or reserve for the payment of all insurance premiums, taxes and assessments against or affecting the Mortgaged Property by paying to Beneficiary, with each installment payment under the Note prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Beneficiary, less all sums paid previously to Beneficiary therefor, divided by the number of installment payments to be made before one month prior to the date when such premiums, taxes and assessments will become delinquent, such sums to be held by Beneficiary, without interest, unless interest is required by applicable law, for the purpose of paying such premiums, taxes and assessments. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent reserve payments or subsequent payments to be made on the Note, and any deficiency shall be paid by Trustor to Beneficiary before one month prior to the date when such premiums, taxes and assessments shall become delinquent. Transfer of legal title to the Mortgaged Property shall automatically transfer the interest of Trustor in all sums deposited with Beneficiary under the provisions hereof or otherwise. Notwithstanding anything to the contrary contained herein, upon the Funding Date, the provisions of this Section 4.5 shall be deemed deleted and replaced with "(RESERVED)" and such provisions for Impositions shall be covered by Section 8.3 of the Permanent Loan Agreement.

4.6 Condemnation. All judgments, decrees and awards for injury or damage to the Mortgaged Property, and all awards pursuant to proceedings for condemnation



thereof, are hereby assigned in their entirety to Beneficiary, who, subject to the terms of Section 4.1(d)(4) of the Loan Agreement (which provides that proceeds may be used for restoration and repairs so long as no Event of default is continuing), may apply the same to the Indebtedness in such manner as it may elect; and Beneficiary is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceedings for the condemnation of the Mortgaged Property, Trustor shall notify Beneficiary of such fact. Trustor shall then, if requested by Beneficiary, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Beneficiary for disposition pursuant to the terms of this Deed of Trust. Beneficiary shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Trustor shall deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. Net proceeds of any condemnation proceeding shall be available for restoration of the Mortgaged Property if after giving effect to the condemnation use of the Mortgaged Property, the use of the Mortgaged Property has not been materially impaired from its intended use and the other requirements for use of insurance proceeds for restoration set forth in the Loan Agreement have been satisfied with respect to the use of the condemnation proceeds (otherwise the proceeds shall be used to pay the Note).

4.7 Taxes on Note or Deed of Trust. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Note, or any part thereof, Trustor shall immediately pay all such taxes; provided that, if it is unlawful for Trustor to pay such taxes, Trustor shall prepay the Note in full without penalty within one hundred twenty (120) days after demand therefor by Beneficiary.

4.8 Statements by Trustor. At the request of Beneficiary, Trustor shall furnish promptly a written statement or affidavit, in such form as may be required by Beneficiary, stating the unpaid balance of the Note, the date to which interest has been paid and that there are no offsets or defenses against full payment of the Note and performance of the terms of the Loan Documents or, if there are any such offsets or defenses, specifying them.

4.9 Repair, Waste, Alterations, etc. Trustor shall keep every part of the Mortgaged Property in good operating order, repair and condition and shall not commit or permit any waste thereof. Trustor shall make promptly all repairs, renewals and replacements necessary to such end. Trustor shall discharge or bond against all claims for labor performed and material furnished therefor, and shall not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property. Trustor shall have the right to contest in good faith the validity of any such mechanic's or materialman's lien, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim,

and provided further Trustor shall thereafter diligently proceed to cause such lien to be removed and discharged. If Trustor shall fail to discharge any such lien, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed, or otherwise giving security for such claim, or by taking such action as may be prescribed by law. Trustor shall guard every part of the Mortgaged Property from removal, destruction and damage, and shall not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened.

4.10 Mechanic's and Materialmen's Liens; State Construction Registry.

(i) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices and further agrees that Beneficiary may file a Notice of Intent to Obtain Final Completion, and Notice of Completion as contemplated by *Utah Code Annotated* Section 38-1a-506, and *Utah Code Annotated* Section 38-1a-507, in each case in the State Construction Registry of the State of Utah. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Mortgaged Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-204(2)(a). Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Mortgaged Property that are included in the State Construction Registry and/or received by Trustor. Trustor shall, upon completion of the Improvements, promptly file a Notice of Intent to Obtain Final Completion, and Notice of Completion in the State Construction Registry as permitted by *Utah Code Annotated* Section 38-1a-506 and *Utah Code Annotated* Section 38-1a-507.

(ii) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction services lien or a construction services lien). Trustor further represents and warrants that no mechanic's lien claim, notice of lien, *lis pendens* or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Mortgaged Property or recorded against the Mortgaged Property.

(iii) If Lender or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor covenants and agrees to cause the lien claimant that filed such preliminary notice to withdraw the preliminary notice pursuant to *Utah Code Annotated* § 38-1a-501 and

Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished before the recording of this Deed of Trust pursuant to *Utah Code Annotated* § 38-1a-503(2)(b) and that such lien claimant has agreed to re-file its withdrawn preliminary notice within 20 days of the date of withdrawal such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

(iv) Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as defined in *Utah Code Annotated* Section 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Mortgaged Property secured hereby, the address of the Mortgaged Property, and the County in which the Mortgaged Property is located.

(v) Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Mortgaged Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the Beneficiary's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of Mortgagee's Title Insurance Policy.

(vi) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property (other than the permitted exceptions listed on Exhibit "B" attached hereto and those permitted by the terms of the Loan Agreement which includes the subordinate liens securing the SLC Loan, as defined therein), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Mortgaged Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of

release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* Section 38-1a-803 and otherwise complies with the requirements of *Utah Code Annotated* Section 38-1a-803 to release the Mortgaged Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* Section 38-1a-803 without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(vii) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Mortgaged Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account of Trustor and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* Section 38-1a-803 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

4.11 No Drilling or Exploration. Without the prior written consent of Beneficiary, there shall be no drilling or exploring for or extraction, removal, or production of minerals from the surface or subsurface of the Land. The term "**minerals**" as used herein shall include, without limiting the generality of such term, oil, gas, casinghead gas, coal, lignite, hydrocarbons, methane, carbon dioxide, helium, uranium and all other natural elements, compounds and substances, including sand and gravel.

4.12 Compliance with Laws. Trustor, the Mortgaged Property, and the use thereof by Trustor shall comply with all laws, rules, ordinances, regulations, covenants, conditions, restrictions, orders and decrees of any governmental authority or court applicable to Trustor or the Mortgaged Property and its use, and Trustor shall pay all fees or charges of any kind in connection therewith.

4.13 Annual LIHTC Reporting Requirements. Trustor must submit to Beneficiary, each year at the time of annual submission of Trustor's financial analysis of operations, a copy of the following sections of Trustor's federal tax return: Internal

Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total low-income housing tax credits ("LIHTCs") allocated to the Mortgaged Property and the LIHTCs claimed for the Mortgaged Property in the preceding year.

4.14 Income, Expense and Financial Statements. Trustor shall provide to Lender all financial information as required by the Loan Agreement.

4.15 **HOLD HARMLESS.** TRUSTOR SHALL DEFEND, AT ITS OWN COST AND EXPENSE, INDEMNIFY AND HOLD BENEFICIARY HARMLESS FROM, ANY PROCEEDING OR CLAIM IN ANY WAY RELATING TO THE MORTGAGED PROPERTY OR THE LOAN DOCUMENTS, EXCEPT TO THE EXTENT THE SAME RESULTS FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY. ALL COSTS AND EXPENSES INCURRED BY BENEFICIARY IN PROTECTING ITS INTERESTS HEREUNDER, INCLUDING ALL COURT COSTS AND REASONABLE ATTORNEYS' FEES AND EXPENSES, SHALL BE BORNE BY TRUSTOR. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE PAYMENT IN FULL OF THE INDEBTEDNESS AND THE RELEASE OF THIS DEED OF TRUST AS TO EVENTS OCCURRING AND CAUSES OF ACTION ARISING BEFORE SUCH PAYMENT AND RELEASE.

4.16 Trade Names. At the request of Beneficiary, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names under which Trustor intends to operate the Mortgaged Property, and representing and warranting Trustor does business under no other trade name with respect to the Mortgaged Property. Trustor shall immediately notify Beneficiary in writing of any change in said trade names, and shall, upon request of Beneficiary, execute any additional financing statements and other certificates required to reflect the change in the trade names and shall execute and file any assumed name certificate required by applicable laws.

4.17 Further Assurances. Trustor, upon the request of Beneficiary, shall execute, acknowledge, deliver and record such further instruments and do such further acts as may be consistent with the Loan Documents and necessary, desirable or proper to carry out the purposes of the Loan Documents and to subject to the liens and security interests created thereby any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, improvements, or appurtenances to the Mortgaged Property.

4.18 Recording and Filing. Trustor shall cause the Loan Documents and all amendments, supplements and extensions thereto and substitutions therefor to be recorded, filed, rerecorded and refiled in such manner and in such places as Beneficiary shall reasonably request, and shall pay all such recording, filing, rerecording and refiling fees, title insurance premiums and other charges.

4.19 Payment of Debts. Trustor shall promptly pay when due all obligations regarding the ownership and operation of the Mortgaged Property except any such

obligations which are being diligently contested in good faith by appropriate proceedings and as to which Trustor, if requested by Beneficiary, shall have furnished to Beneficiary security satisfactory to Beneficiary.

4.20 Modification by Subsequent Owners. Trustor agrees that it shall be bound by any modification of this Deed of Trust or any of the other Loan Documents made by Beneficiary and any subsequent owner of the Mortgaged Property, with or without notice to Trustor, and no such modifications shall impair the obligations of Trustor under this Deed of Trust or any other Loan Instrument. Nothing in this Paragraph shall be construed as permitting any transfer of the Mortgaged Property which would constitute an Event of Default under the provisions of this Deed of Trust.

4.21 Inspections. In addition to and without limiting the terms of the Loan Agreement, upon three days prior written notice to Trustor (but without any such notice during the continuance of an Event of Default), Trustor will (i) permit Beneficiary at all reasonable times to go upon, examine and inspect the Mortgaged Property, including making appraisals and environmental assessments, (ii) except as otherwise provided in the Loan Agreement, furnish all information Beneficiary reasonably requests relating to the development and operation of the Mortgaged Property, (iii) permit Beneficiary to make copies of such information and (iv) if Beneficiary reasonably believes Hazardous Materials to be present on the Mortgaged Property, permit Beneficiary to perform environmental assessments of the Mortgaged Property and in connection therewith to take away samples of air, building materials, soil and water.

4.22 Utility Capacity. Trustor shall not transfer, sell, assign or convey, either in whole or in part, other than to Beneficiary, any capacity for utilities which may be available to the Mortgaged Property. Trustor acknowledges that without the availability of utilities to the Mortgaged Property the value of the collateral would be significantly diminished and that the credit being extended under the Indebtedness is based upon such availability.

4.23 Flood Plain. Neither the Mortgaged Property nor any part thereof is located within an area that has been designated or identified as an area having special flood hazards or flood prone characteristics by the Secretary of Housing and Urban Development, the Federal Emergency Management Agency, or by such other official or agency as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as such Acts may, from time to time, be amended and in effect, or pursuant to any other national or state program of flood insurance (the "**Flood Plain**"), or in the alternative, if the Mortgaged Property or any part thereof does lie within the Flood Plain, (a) Trustor will immediately notify Beneficiary in writing and (b) Trustor will maintain at all times during the existence of the Indebtedness flood insurance with respect to the Mortgaged Property in amounts not less than the maximum limit of insurance coverage then available with respect to the Mortgaged Property pursuant to any and all national and state flood insurance programs then in effect or the amount of the Indebtedness, whichever is less, and cause all insurance so carried to be made

payable to Beneficiary pursuant to a standard mortgagee clause, without contribution, and cause all such policies to be delivered to Beneficiary as required by Paragraph 4.3 hereof.

## ARTICLE 5

### SUBORDINATE DEED OF TRUST

Except for the Permitted Encumbrances and as otherwise provided in the Loan Documents, Trustor shall not, without the prior written consent of Beneficiary, grant any lien, security interest, or other encumbrance (hereinafter called "**Subordinate Deed of Trust**") covering any of the Mortgaged Property. If the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable, any such Subordinate Deed of Trust shall contain express covenants to the effect that:

(a) the Subordinate Deed of Trust is unconditionally subordinate to this Deed of Trust;

(b) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Deed of Trust, no tenant of any of the Leases shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Beneficiary;

(c) Rents, if collected by or for the holder of the Subordinate Deed of Trust, shall be applied first to the payment of the Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Mortgaged Property in such order as Beneficiary may determine, prior to being applied to any indebtedness secured by the Subordinate Deed of Trust; and

(d) written notice of default under the Subordinate Deed of Trust and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Deed of Trust shall be given to Beneficiary with or immediately after the occurrence of any such default or commencement.

## ARTICLE 6

### MISCELLANEOUS

6.1 Collection. If the Indebtedness shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after default or maturity, Trustor agrees to pay the reasonable attorneys' and collection fees in the amount set forth in the Note, and such fees shall be a part of the Indebtedness.

6.2 Change in Ownership. If the ownership (legal or beneficial) of the Mortgaged Property or any part thereof becomes vested in a person other than Trustor, or in the event of a change of any ownership of Trustor (legal or beneficial) except as permitted by the terms of the Loan Agreement, Beneficiary may, without notice to Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and to the Indebtedness in the same manner as with Trustor without in any way vitiating or discharging Trustor's liability hereunder or upon the Indebtedness. No sale of the Mortgaged Property, and no forbearance on the part of Beneficiary, and no extension of the time for the payment of the Indebtedness, shall operate to release or affect the original liability of Trustor.

6.3 Release of Lien. If Trustor shall perform each of the covenants and agreements herein contained (including the full and final payment of all Indebtedness, then this conveyance shall become null and void and shall be released at Trustor's written request and expense; otherwise, it shall remain in full force and effect. No release or modification of this conveyance, or of the lien, security interest or assignment created and evidenced hereby, shall be valid unless executed by Beneficiary.

6.4 Partial Release of Lien, Extension, etc. Any part of the Mortgaged Property may be released by Beneficiary without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the Indebtedness. The taking of additional security, or the extension or renewal of the Indebtedness or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor of any of the Indebtedness ("**Guarantor**") or improve the right of any permitted junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the Indebtedness, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is paid.

6.5 Waiver of Marshalling and Certain Rights. To the extent Trustor may lawfully do so, Trustor hereby expressly waives any right pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matters to defeat, reduce or affect the right of Beneficiary to sell the Mortgaged Property for the collection of the Indebtedness (without any prior or different resort for collection), or the right of Beneficiary to the payment of the Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant.

6.6 Subrogation. To the extent that proceeds of the Indebtedness are used to pay any outstanding lien, charge or encumbrance affecting the Mortgaged Property, such proceeds have been advanced by Beneficiary at Trustor's request, and Beneficiary shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that



the terms and provisions hereof shall govern the rights and remedies of Beneficiary and shall supersede the terms, provisions, rights, and remedies under the lien or liens to which Beneficiary is subrogated hereunder.

6.7 No Waiver. No waiver of any Event of Default or any other default on the part of Trustor or breach of any of the provisions of this Deed of Trust or of any other instrument executed in connection with the Indebtedness shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. Acceptance by Beneficiary of partial payments shall not constitute a waiver of the default by failure to make full payments.

6.8 Limitation on Interest. All agreements between Trustor and Beneficiary, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand for payment of or acceleration of the maturity of any of the Indebtedness or otherwise, shall the interest contracted for, charged or received by Beneficiary exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Beneficiary in excess of the maximum lawful amount, the interest payable to Beneficiary shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Beneficiary shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal balance of the Indebtedness and not to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal of the Indebtedness, such excess shall be refunded to Trustor. All interest paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal of the Indebtedness (including the period of any renewal or extension thereof) so that the interest thereon for such full period shall not exceed the maximum amount permitted by applicable law. This paragraph shall control all agreements between Trustor and Beneficiary.

6.9 Successors and Assigns; Use of Terms. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders. The term "**Trustor**" shall include in their individual capacities and jointly all parties hereinabove named a Trustor. The term "**Beneficiary**" shall include any lawful owner, holder, pledgee, or assignee of any of the Indebtedness. The duties, covenants, conditions, obligations, and warranties of Trustor in this Deed of Trust shall be joint and several obligations of Trustor and each Trustor, if more than one, and each of Trustor's heirs, executors, administrators, personal representatives, successors and assigns. Each party who executes this Deed of Trust and each subsequent owner of the

Mortgaged Property, or any part thereof (other than Beneficiary), covenants and agrees that it will perform, or cause to be performed, each term and covenant of this Deed of Trust.

6.10 Beneficiary's Consent. Except as otherwise specifically provided herein, in any instance hereunder where Beneficiary's approval or consent is required or the exercise of Beneficiary's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole and reasonable discretion of Beneficiary.

6.11 Severability. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective while this Deed of Trust is in effect, the legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid, or unenforceable provision as may be possible. If any of the Indebtedness shall be unsecured, the unsecured portion of the Indebtedness shall be completely paid prior to the payment of the secured portion of such Indebtedness, and all payments made on account of the Indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Indebtedness.

6.12 Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination that is not so documented shall not be effective as to any party.

6.13 No Partnership. Nothing contained in the Loan Documents is intended to create any partnership, joint venture or association between Trustor and Beneficiary, or in any way make Beneficiary a co-principal with Trustor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

6.14 Headings. The article, paragraph and subparagraph headings hereof are inserted for convenience of reference only and shall not alter, define, or be used in construing the text of such articles, paragraphs or subparagraphs.

6.15 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Trustor and Beneficiary with respect to the transactions arising in connection with the Indebtedness and supersede all prior written or oral understandings and agreements between Trustor and Beneficiary in connection therewith. **THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR**

**SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN, ORAL AGREEMENTS BETWEEN THE PARTIES.**

6.16 Absence of Obligations of Beneficiary with respect to Mortgaged Property. Notwithstanding anything in this Deed of Trust to the contrary, including, without limitation, the definition of "**Mortgaged Property**" and/or the provisions of Article II hereof, but subject as otherwise provided by applicable law, (a) the Mortgaged Property is comprised of Trustor's rights, title and interests therein but not its obligations, duties or liabilities pertaining thereto, (b) Beneficiary neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in connection with the definition of "**Mortgaged Property**" herein, either prior to or after obtaining title to such Mortgaged Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (c) Beneficiary may, at any time prior to or after the acquisition of title to any portion of the Mortgaged Property as above described, advise any party in writing as to the extent of Beneficiary's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Mortgaged Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Beneficiary shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Mortgaged Property, as lessee under any lease or purchaser or seller under any contract or option unless Beneficiary elects otherwise by written notification.

6.17 Notices. Except as otherwise provided in subparagraph (c) of Paragraph 8.1 of this Deed of Trust, all notices, demands, requests, approvals and other communications required or permitted hereunder or the Loan Agreement shall be in writing and shall be deemed to have been given when presented personally or deposited in a regularly maintained mail receptacle of the United States Postal Service, postage prepaid, registered or certified, return receipt requested, addressed to Trustor at its address set forth in the first paragraph of this Deed of Trust or to Beneficiary at its address set forth in Paragraph 1.1 hereof, or such other address as Trustor or Beneficiary may from time to time designate by written notice to the other as herein required. Copies of all notices sent to Borrower under the terms of this Instrument or any related document shall also be sent to (i) Boston Capital Direct Placement, A Limited Partnership, c/o Boston Capital Partners, One Boston Place, Suite 2100, Boston, Massachusetts 02108, Attention: Residences at Earl Campbell, (ii) Holland & Knight LLP, 10 St. James Avenue, Boston, Massachusetts 02116, Attention: Douglas W. Clapp, Esq., (iii) Cornerstone Permanent Mortgage Fund III LLC , c/o Boston Capital Partners, One Boston Place, Suite 2200, Boston, Massachusetts 02108, Attention: Bill Fazzano and Sean Curry, Mortgage Loan No.: 00010 (CPMF II) and (iv) Holland & Knight LLP, 10 St. James Avenue, Boston, Massachusetts 02116, Attention: Suanne C. St. Charles, Esq.

6.18 Costs and Expenses. Trustor shall promptly reimburse Beneficiary upon request for all reasonable amounts expended, advanced or incurred by Beneficiary after and during the continuation of an Event of Default (a) to satisfy any obligation of Trustor under the Loan Documents, (b) necessary to protect the assets or business of Trustor,

(c) to collect the Note, or (d) to enforce the rights of Beneficiary under the Loan Documents, which amounts will include, without limitation, all court costs and reasonable attorney's fees incurred by Beneficiary in connection with any such matters, together with interest at the lesser of the Past Due Rate or the Maximum Rate, as such term is defined in the Note, on each such amount from the date of notification to Trustor that the same was expended, advanced or incurred by Beneficiary until the date it is repaid to Beneficiary.

6.19 Construction Deed of Trust. This Deed of Trust secures an obligation incurred for the construction of improvements on land. This Deed of Trust is a construction deed of trust and is entitled to the benefits of *Utah Code Annotated* Section 70A-9a-334(8), as amended.

6.20 Permitted Encumbrances. The conveyance of the Mortgaged Property from Trustor provided for herein is made and accepted subject to the Permitted Encumbrances listed on Exhibit "B" attached hereto.

6.21 Residential Status of Mortgaged Property. Trustor acknowledges that the stated purpose for which this Deed of Trust is given is to construct residential rental property. Accordingly, to permit Beneficiary to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Trustor agrees that promptly upon completion of the contemplated Improvements, it will provide to a Beneficiary a written summary of the number of dwelling units within the Improvements by unit or apartment number and the mailing address for each such unit or apartment. Trustor agrees to promptly update such written summary and provide the same to Beneficiary from time to time upon request from Beneficiary. To further allow Beneficiary to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Trustor agrees to provide a written roll, copies of all tenant leases, a summary list of tenants and addresses by unit or apartment number at least every six months and more frequently at any time upon the request of Beneficiary.

6.22 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 UTAH WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

6.23 JURY WAIVER. THE UNDERSIGNED AND BENEFICIARY (BY ITS ACCEPTANCE OF THIS DEED OF TRUST) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BENEFICIARY AND THE UNDERSIGNED. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

6.24 WAIVER OF SPECIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TRUSTOR SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST THE BENEFICIARY, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS DEED OF TRUST OR ANY DEED OF TRUST OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE LOAN EVIDENCED BY THE NOTE OR THE USE OF THE PROCEEDS THEREOF.

## ARTICLE 7

### EVENTS OF DEFAULT

The occurrence of any one of the following shall be a default hereunder ("**Event of Default**"):

7.1 Loan Agreement Cross Default. The occurrence of an Event of Default under and as defined in the Loan Agreement.

7.2 Transfer of the Mortgaged Property. Without the prior written consent of Beneficiary, title to all or any material part of the Mortgaged Property (other than obsolete or worn Personal Property or other items of Personal Property replaced by adequate substitutes) shall become vested in any party other than Trustor, whether by operation of law or otherwise.

7.3 Grant of Easement, etc. Without the prior written consent of Beneficiary, Trustor grants any easement or dedication, files any plat, condominium declaration, or restriction or otherwise encumbers the Mortgaged Property, unless such action is expressly permitted by the Loan Documents or does not materially adversely affect the functionality of the Mortgaged Property for its intended use.

7.4 Foreclosure of Other Liens. The holder of any lien, security interest or assignment on the Mortgaged Property institutes foreclosure or other proceedings for the enforcement of its remedies thereunder which are not dismissed within 60 days.

7.5 Liquidation, Death, Etc. The liquidation, termination, dissolution, or failure to maintain good standing in the State of Utah (if applicable) of Trustor, if such condition is not fully remedied within thirty (30) days after written notice of such condition from Beneficiary to Trustor.

7.6 Hazardous or Toxic Material. Any toxic or hazardous materials are found, used, generated, stored or disposed of on the Mortgaged Property in violation of any rule, law, or regulation, and if such condition is not fully remedied within thirty (30) days after written notice of such condition from Beneficiary to Trustor.

## ARTICLE 8

### REMEDIES

8.1 Exercise of Specific Remedies. If an Event of Default shall occur, Beneficiary may exercise any one or more of the following remedies, without notice:

(a) Acceleration. Beneficiary may declare the Indebtedness immediately due and payable, without notice, whereupon the same shall become immediately due and payable. Trustor hereby waives notice of intent to accelerate and notice of acceleration. Beneficiary may, in addition to the exercise of any or all of the remedies specified in Section 3.5:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon the Indebtedness, all in such order as Beneficiary may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Mortgaged Property or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale;

(ii) Commence an action to foreclose the lien of this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(iii) Exercise of the power of sale herein contained and deliver to Trustee a written statement of breach, notice of default and election to cause Trustor's interest in the Mortgaged Property to be sold; or

(iv) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Indebtedness, or by law.

(b) Enforcement of Assignment of Rents and Leases. Prior or subsequent to taking possession of any portion of the Mortgaged Property or taking any action with respect to such possession, Beneficiary may:

(i) collect and/or sue for the Rents in Beneficiary's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees and expenses, apply the net proceeds thereof to any Indebtedness as Beneficiary may elect;

(ii) make, modify, enforce, cancel, terminate or accept surrender of any Leases, evict tenants, adjust the Rents, maintain, decorate, refurbish, repair, clean, and make space ready for renting, and otherwise do anything Beneficiary deems advisable in connection with the Mortgaged Property;

(iii) apply the Rents so collected to the operation and management of the Mortgaged Property, including the payment of management, brokerage and reasonable attorneys' fees and expenses, and/or to the Indebtedness; and

(iv) require Trustor to transfer all security deposits and records thereof to Beneficiary together with all original counterparts of the Leases.

(c) Exercise of Power of Sale.

(i) If Beneficiary elects to exercise the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(ii) Upon receipt of such statement and notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such notice of default as then required by law *Utah Code Annotated* Sections 57-1-24 and 26. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and notice of sale having been published and posted as then required by law, sell the Mortgaged Property at the time and place of sale fixed by it in said notice of sale, and if the property consists of separate lots, in accordance with *Utah Code Annotated* Section 57-1-28, in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds in accordance with *Utah Code Annotated* Section 57-1-28 conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and

Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(iii) After deducting all reasonable costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, Trustee's fees and reasonable attorneys' fees, and costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees and fees permitted hereunder; (ii) second, to the payment of the obligations secured hereby; (iii) all other sums, then secured hereby; and (iv) the remainder, if any, to the person or persons legally entitled thereto or as provided in *Utah Code Annotated*, Section 57-1-29, as amended, or any similar or successor statute.

(iv) Subject to applicable law, *Utah Code Annotated* Section 57-1-27, Trustee may postpone sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

(v) For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Mortgaged Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, swap contract breakage fees and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Mortgaged Property pursuant to this Deed of Trust.

(vi) In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(vii) Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, any Beneficiary may commence suit to collect such deficiency in accordance with *Utah Annotated Code* § 57-1-32 or other applicable law.



(viii) If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* Section 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* Section 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

(d) Lawsuits. Beneficiary may proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction.

(e) Entry on Mortgaged Property. Upon occurrence of an Event of Default hereunder, Beneficiary may enter into and upon and take possession of all or any part of the Mortgaged Property, and may exclude Trustor, and all persons claiming under Trustor, and its or their agents or servants, wholly or partly therefrom; and, holding the same, Beneficiary may use, administer, manage, operate, and control the Mortgaged Property and may exercise all rights and powers of Trustor in the name, place and stead of Trustor, or otherwise, as the Beneficiary shall deem best; and in the exercise of any of the foregoing rights and powers Beneficiary shall not be liable to Trustor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Beneficiary.

(f) Trustee or Receiver. Beneficiary may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Trustor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, for appointment of a receiver of the Mortgaged Property, and Trustor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply the Rents in accordance with the provisions of Paragraph 2.1 hereof.

8.2 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9a of the Utah UCC, Beneficiary, upon an Event of Default, may proceed under the Utah UCC or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, and treat both real and personal property interests as one parcel or package of security.

8.3 Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the introductory paragraph on page 1.

8.4 Tenancy at Will. In the event of a trustee's sale hereunder and if at the time of such sale Trustor or any other party occupies the portion of the Mortgaged Property so sold or any part thereof, other than a tenant under a Lease, such occupant shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property.

8.5 Substitute Trustee. Beneficiary may from time to time, in accordance with *Utah Code Annotated* Section 57-1-22, by instrument in writing, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust, which instrument, when executed by Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Land is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all of its title, estate, rights, powers, and duties. Such instrument shall contain the name of the original Trustor, Trustee and Beneficiary, the book and page where this Deed of Trust is recorded (or the date of recording and instrument number) and the name and address of the new Trustee.

8.6 **INDEMNIFICATION OF TRUSTEE.** EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TRUSTEE SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION OR ERROR OF JUDGMENT. TRUSTEE MAY RELY ON ANY DOCUMENT BELIEVED BY HIM IN GOOD FAITH TO BE GENUINE. ALL MONEY RECEIVED BY TRUSTEE SHALL, UNTIL USED OR APPLIED AS HEREIN PROVIDED, BE HELD IN TRUST, BUT NEED NOT BE SEGREGATED (EXCEPT TO THE EXTENT REQUIRED BY LAW), AND TRUSTEE SHALL NOT BE LIABLE FOR INTEREST THEREON. Trustor HEREBY INDEMNIFIES TRUSTEE AGAINST ALL LIABILITY AND EXPENSES THAT HE MAY INCUR IN THE PERFORMANCE OF HIS DUTIES HEREUNDER, EXCEPT TO THE EXTENT THE SAME RESULTS FROM TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

8.7 Beneficiary's Right to Perform. Upon Trustor's failure to make a payment or perform an act required by the Loan Documents, then at any time thereafter, and without notice to or demand upon Trustor and without waiving or releasing any other right, remedy or recourse, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Trustor, and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action as it may deem necessary or appropriate.

8.8 Reimbursement of Expenditure. If Beneficiary shall expend any money chargeable to Trustor or subject to reimbursement by Trustor under the terms of the Loan Documents, Trustor shall repay the same to Beneficiary immediately at the place where the Note is payable, together with interest thereon at the lesser of the Past Due Rate or the Maximum Rate from and after the date of notification to Trustor of each such expenditure by Beneficiary. Any amounts disbursed by Lender under this Section 12, or under any other provision of this Deed of Trust that treats such disbursement as being made under this Section 12, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "**Default Rate**", as defined in each Note or the Permanent Loan Agreement (after the Funding Date).

8.9 Other Rights. Beneficiary may exercise any and all other rights, remedies and recourses granted under the Loan Documents now or hereafter existing in equity or at law for the protection and preservation of the Mortgaged Property. In the event of any bankruptcy auction with respect to any or all of the Mortgaged Property, whether such sale is conducted pursuant to *United States Code Title 11, Section 363* or *United States Title 11, Section 1129(b)(2)(A)*, Beneficiary shall have the absolute right to bid and become the purchaser at any such sales and credit the Indebtedness against any such successful bid.

8.10 Remedies Cumulative, Concurrent and Nonexclusive. Beneficiary shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including, without limitation, those granted by the Utah UCC and applicable to the Mortgaged Property, or any portion thereof), and same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Trustor or others obligated for the Indebtedness, or any part thereof or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive.

IN WITNESS WHEREOF, Borrower has signed and delivered this Instrument or has caused this Instrument to be signed and delivered by its duly authorized representative.

**BORROWER**

**NORTH TEMPLE FLATS, LLC**, a Utah limited liability company

By: NTF Management, LLC, a Utah limited liability company, its Managing Member

By: CAB Group of Utah IV, L.C., a Utah limited liability company, its Manager

By: J. Randolph Cassidy  
 J. Randolph Cassidy  
 Manager

STATE OF UTAH §  
 COUNTY OF SALT LAKE §

This instrument was acknowledged before me on the 22 day of DECEMBER, 2016, by J. RANDOLPH CASSIDY, Manager of CAB Group Utah IV, L.C., a Utah limited liability company, on behalf of said limited liability company as the Manager of NTF Management, LLC, a Utah limited liability company, on behalf of said limited liability company as the Manager Member of North Temple Flats, LLC, a Utah limited liability company.

[Affix Seal]

Eileen K. Snideman  
 NOTARY PUBLIC, State of \_\_\_\_\_



EXHIBIT "A"

Beginning at the Southwest corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, (Salt Lake County Survey Monument reset in 1993, Monument No. 1N1W3301) said monument lies North  $00^{\circ}04'57''$  East 34.69 feet from an unmarked County Survey Monument located at the South right of way line of the Salt Lake Garfield & Western Railroad, said unmarked monument lies South  $89^{\circ}57'27''$  West 2639.80 feet from the North quarter corner of Section 3, Township 1 South, Range 1 West, Salt Lake Base and Meridian, as shown on the area reference plat on file in the Salt Lake County Surveyor's office, and running thence North  $00^{\circ}00'38''$  West along the section line 672.85 feet to the South right of way line of North Temple Street; thence along said right of way the following three (3) courses and distances: 1) North  $89^{\circ}58'39''$  East 121.33 feet, 2) South  $69^{\circ}00'36''$  East 20.55 feet and 3) North  $89^{\circ}58'38''$  East 34.48 feet; thence South  $00^{\circ}00'38''$  East 214.00 feet; thence North  $90^{\circ}00'$  East 6.40 feet more or less to an existing fence line; thence South  $00^{\circ}04'12''$  East 246.98 feet; thence North  $89^{\circ}31'11''$  West 3.86 feet; thence South  $00^{\circ}08'38''$  East along an existing building line and its extension thereof North and South, 237.70 feet; thence North  $89^{\circ}56'23''$  West 3.31 feet; thence South  $89^{\circ}56'42''$  West 94.38 feet; thence North  $00^{\circ}03'18''$  West 20.00 feet; thence South  $89^{\circ}56'42''$  West 80.62 feet; thence North  $00^{\circ}03'18''$  West 13.27 feet to the point of beginning.

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## EXHIBIT B

### (PERMITTED EXCEPTIONS)

This conveyance is made and accepted subject to the following Permitted Exceptions:

1. Subject to the right to locate and construct irrigation and/or waste water ditches as granted by that certain Right of Way Deed recorded August 6, 1941 as Entry No. 910744 in Book 281 at Page 105 of Official Records.
2. Subject to the right to locate and construct irrigation and/or waste water ditches as granted by that certain Right of Way Deed recorded August 6, 1941 as Entry No. 910745 in Book 281 at Page 106 of Official Records.
3. An easement for gas transmission and distribution facilities and incidental purposes, the exact location of which was not disclosed, as created in favor of Mountain Fuel Supply Company, a Utah corporation, its successors and assigns by Instrument recorded September 30, 1953 as Entry No. 1345948 in Book 1038 at Page 32 of Official Records.
4. An easement for gas transmission and distribution facilities and incidental purposes, as created in favor of Mountain Fuel Supply Company, a Utah corporation, its successors and assigns by Instrument recorded October 14, 1966 as Entry No. 2174917 in Book 2500 at Page 623 of Official Records.
5. An easement for gas transmission and distribution facilities and incidental purposes, as created in favor of Mountain Fuel Supply Company, a corporation of the State of Utah, its successors and assigns by Instrument recorded August 28, 1968 as Entry No. 2257737 in Book 2686 at Page 174 of Official Records.
6. An easement for gas transmission and distribution facilities and incidental purposes, as created in favor of Mountain Fuel Supply Company, a corporation of the State of Utah, its successors and assigns by Instrument recorded May 24, 1973 as Entry No. 2542043 in Book 3333 at Page 350 of Official Records.

7. An easement for gas transmission and distribution facilities and incidental purposes, as created in favor of Mountain Fuel Supply Company, a corporation of the State of Utah, its successors and assigns by Instrument recorded March 5, 1975 as Entry No. 2688689 in Book 3797 at Page 255 of Official Records.
8. An easement over, across or through the land for communication and other facilities and incidental purposes, as granted to The Mountain States Telephone and Telegraph Company, a Colorado corporation, its successors, assigns, lessees, licensees and agents by Instrument recorded October 3, 1980 as Entry No. 3485263 in Book 5159 at Page 527 of Official Records.
9. An easement over, across or through the land for electric transmission and distribution facilities and incidental purposes, as granted to Utah Power & Light Company, a corporation, its successors in interest and assigns by Instrument recorded December 26, 1985 as Entry No. 4181513 in Book 5721 at Page 2070 of Official Records.
10. An easement over, across or through the land for electric transmission and distribution facilities and incidental purposes, as granted to Utah Power & Light Company, a corporation, its successors in interest and assigns by Instrument recorded April 15, 1988 as Entry No. 4610615 in Book 6020 at Page 915 of Official Records.
11. An easement over, across or through the land for electric transmission and distribution facilities and incidental purposes, as granted to PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power its successors and assigns by Instrument recorded August 24, 2010 as Entry No. 11016841 in Book 9851 at Page 7915 of Official Records.
12. An easement over, across or through the land for electric transmission and distribution facilities and incidental purposes, as granted to PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power its successors and assigns by Instrument recorded August 24, 2010 as Entry No. 11016842 in Book 9851 at Page 7919 of Official Records.

13.

An easement over, across or through the land for electric transmission and distribution facilities and incidental purposes, as granted to PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power its successors and assigns by Instrument recorded August 24, 2010 as Entry No. 11016843 in Book 9851 at Page 7923 of Official Records.

14.

Avigation Easement in favor of Salt Lake City Corporation for the free and unrestricted passage of aircraft of any and all kinds in, through, across and about the airspace over the land recorded October 11, 2016 as Entry No. 12386712 in Book 10486 at Page 7454 of Official Records.

15.

Boundary and Partition Fence Agreement recorded December \_\_\_\_, 2016 as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of Official Records.

16.

Low-Income Housing Credit Commitment Agreement and Declaration of Restrictive Covenants recorded December \_\_\_\_, 2016 as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of Official Records.



**EXHIBIT C**  
**FINANCING STATEMENT INFORMATION**

The Beneficiary/Secured Party is:

JPMORGAN CHASE BANK, N.A.  
2200 Ross Avenue, 9<sup>th</sup> Floor  
Mail Code TX1-2951  
Dallas, Texas 75201

The Debtor is:

North Temple Flats, LLC  
283 West Front Street, Suite 1  
Missoula, Montana 59802  
Organizational Identification Number: 9555907-0160

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