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Gary W. Ott
Recorder, Salt Lake County, UT
OLD REPUBLIC TITLE SO JORDAN
BY: eCASH, DEPUTY - EF 35 P.

WHEN RECORDED MAIL TO:

Kirton McConkie
50 East South Temple Street
Salt Lake City, Utah 84111
Attention: Loyal C. Hulme, Esq.

[Space above this line for Recorder's use only]

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**") is made as of November 25, 2015, by Lake City Capital XII, LLC, a Utah limited liability company, whose address is 7370 South Creek Road, Suite 204, Sandy, Utah 84093 ("**Trustor**"), in favor of Loyal C. Hulme, a member of the Utah state bar ("**Trustee**"), for the benefit of Cambia Capital Partners, LLC, a Utah limited liability company ("**Beneficiary**").

This Deed of Trust constitutes an assignment of rent pursuant to the Utah Uniform Assignment of Rents Act (Utah Code Annotated §57-26-101 *et seq.*). This Deed of Trust also constitutes a Security Agreement with Trustor being the Debtor and Beneficiary being the Security Party pursuant to the Utah Uniform Commercial Code (Utah Code Annotated §70A-9a-101 *et seq.*). This Deed of Trust also constitutes and is filed as a fixture filing under Section 334 of the Utah Uniform Commercial Code (Utah Code Annotated §70A-9a-334).

The Loan. On the terms and subject to the conditions set forth in a Promissory Note of even date herewith by Trustor (the "**Note**"), Beneficiary has agreed to make a loan (the "**Loan**") to Trustor in the maximum principal amount of One Million Thirty Six Thousand Eight Hundred Seventy Dollars (\$1,036,870) for purposes that include financing the purchase of certain real property and/or purchase and/or design and construction of the Improvements thereon, as such real property is more particularly described in Exhibit A attached to this Deed of Trust (the "**Real Property**"). In addition, Trustor has committed to provide Beneficiary certain rights pursuant to the terms and conditions of the Second Amended and Restated Operating Agreement of Trustor, as modified or amended (the "**Operating Agreement**"). The Note, this Deed of Trust, the Pledge and Security Agreement, the Management Services Agreement and all other instruments, agreements, certificates and documents that evidence, secure or set forth any of Trustor's obligations relating to the Loan or any security for the Loan, all as amended, modified, extended, renewed, restated, and supplemented from time to time, and whether now in existence or hereafter made or entered into, and whether or not secured by this Deed of Trust, are hereinafter collectively referred to as the "**Loan Documents**." Terms not defined herein shall have their respective meanings as set forth in the Note.

Grant to Trustee. In consideration of the Loan, and subject to all security interests and rights granted or assigned by Trustor to Beneficiary in the Loan Documents, (1) Trustor hereby irrevocably grants, bargains, sells, transfers, conveys, warrants, and assigns to Trustee, in trust for Beneficiary, with power of sale, under and subject to the terms and conditions hereinafter set forth, for the benefit and security of Beneficiary, all of Trustor's present and future estate, right, title and interest in and to the Real Property, together with all of the following in which Trustor now has or hereafter may acquire any right, title or interest:

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(i) all buildings, structures and other improvements and tenements of any nature now or hereafter located on the Real Property ("**Improvements**");

(ii) all fixtures, machinery, equipment, mobile homes, trailers, furniture, furnishings, building materials, appliances, apparatus, communications and utility systems and facilities, landscaping and goods, articles and accessions of property of every nature now or hereafter located in or on, attached to, or used or adapted for use or intended to be used or adapted to be used in connection with the ownership, development, operation or maintenance of the Real Property and the Improvements, whether or not physically affixed to the Real Property and Improvements (whether such items are leased, owned or subject to any title-retaining or security instrument); all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposals, refrigerators and other appliances; all escalators and elevators, baths, sinks, cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sashes; all carpeting, underpadding, floor covering, paneling, and draperies; all furnishings of public spaces, halls and lobbies; and all shrubbery and plants. All such items shall be deemed part of the Real Property and not severable wholly or in part without material injury to the freehold;

(iii) all rights to minerals, oil and gas and other hydrocarbon substances, all water, irrigation and drainage rights, and all crops and timber on, under or relating to the Real Property; all shares of stock in any water company, canal company, or irrigation company, or other utility supplying water or utility services to the Real Property; and all damages, royalties and revenues of every kind, nature and description whatsoever that Trustor may be entitled to receive from any person or entity owning or hereafter acquiring a right to any oil, gas and mineral rights and reservations appurtenant or otherwise related to the Real Property;

(iv) all privileges and other rights now or hereafter appurtenant or incidental to the Real Property, including air rights and development rights relating to the Real Property and all streets, curbs, gutters, sidewalks, sewers, storm drains, roads and public places, open or proposed; and all licenses, easements and rights of way, public or private, now or hereafter used in connection with the Real Property;

(v) all rents, issues, profits, income, royalties, fees, proceeds from any sale, leasing, refinancing, condemnation (temporary or permanent) or other disposition of all or any portion of or interest in the "Property" (as defined below) and other proceeds and revenues of any nature of, from or relating to the Property or any business conducted thereon, including those now due, past due and to become due (collectively, "**Revenues**");

(vi) all existing and future leases (including oil and gas leases), subleases, tenancies, occupancy agreements, licenses and other agreements for the use or occupancy of all or any portion of or interest in the Real Property, whether written or oral, and any guarantees thereof, together with any and all extensions, modifications, amendments, assignments and renewals thereof, and all cash, letters of credit, security deposits, or other security to secure performance by the lessees or tenants of their obligations thereunder, whether such cash or security is to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due prior to the expiration of the term thereof (collectively, the "**Leases**");

(vii) all existing and future real estate purchase agreements and other agreements for the sale of all or any portion of or interest in the Real Property, together with any and all extensions, modifications, amendments, assignments and renewals thereof, and all cash or other earnest money deposited to secure performance by the purchaser of their obligations thereunder, whether such cash or

security is to be held until the closing of such transactions or released prior to the closing of such transaction (collectively, the "**Purchase Agreements**");

(viii) all insurance and insurance policies insuring the Real Property or any activity thereon or part thereof or interest therein (including fire and extended coverage, public liability, worker's compensation, builder's risk, flood, and earthquake insurance policies, if any) and all proceeds of such insurance policies; all claims, awards, damages, causes of action, actions, judgments, recoveries, compensation, awards and proceeds arising on account of injury or damage to or taking of all or any part of the Real Property or for any loss or diminution in value of the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all deposits made with or other security given by Trustor to governmental authorities, utility companies and other third parties with respect to the Property; all claims or demands with respect to such deposits or security; and all right to refunds or rebates of any such insurance premiums or deposits, taxes or assessments on the Property;

(ix) all licenses, approvals, and permits, including land use, zoning, subdivision, and/or site plan applications and approvals, conditional use permits, building permits, etc. submitted to, approved by, or issued from any governing governmental authority having jurisdiction over the Real Property (collectively, the "**Permits**"), contracts, management contracts or agreements, franchise agreements, building, occupancy and other governmental and non-governmental permits, authorizations, consents and certificates acquired or used in connection with the construction, use, ownership, operation, occupancy, maintenance, repair, improvement or development of, or conduct of business on, the Real Property;

(x) any and all contracts, architectural and engineering agreements, management agreements, construction contracts, construction guarantees and warranties, material supply contracts, contracts with consultants, engineers, surveyors, appraisers, and other professionals related to the performance of any surveys, studies, reports, management, and services pertaining to the Real Property, including all performance, payment, completion and other surety bonds ("**Property Contracts**");

(xi) all of Trustor's assets, including, without limitation, tangible and intangible personal property now or hereafter used, acquired in connection with or in any way arising out of or related to the ownership, development, operation or maintenance of the Real Property and the Improvements, including, without limitation, all furniture, furnishings, equipment, supplies, inventory and other goods, wherever located, whether in the possession of Trustor, warehousemen, bailee or any other person; all permits, licenses, franchises and trade names; all site plans, plats, architectural plans, specifications, work drawings, surveys, engineering reports, topographical studies, test borings, market surveys, and other similar work products; all contract rights and all claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies, deposits (including tax, insurance and other reserves), instruments, documents of title, general intangibles and business records, and all other personal property, whether tangible or intangible, wherever located and used or to be used in any way in connection with, or in any way relating to, the Real Property or the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, or development of, or conduct of business on, the Real Property, whether now owned or hereafter acquired or created (including, books and records, equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights, as all such terms are used in the Utah Uniform Commercial Code) (collectively, "**Personal Property**");

(xii) all warranties, guarantees, and, to the extent assumed by Borrower, service contracts and other agreements, relating to the operation of the Real Property and the Personal Property (the "**Service Contracts**");

(xiii) the right to use any trade name now used in connection with the Real Property including the trade name "Cambia," and phone numbers used by Borrower in connection with the Real Property;

(xiv) all present and future monetary deposits given to any public or private utility with respect to utility services furnished to the Real Property or the Improvements;

(xv) all supplements, modifications and amendments to any of the foregoing; all substitutions, replacements, additions, and accessions to any and all of the foregoing; any of the foregoing hereafter acquired by Trustor;

(xvi) any and all interests, stock, shares, or membership in any community association, water or canal company, or any other entity in which Trustor owns or holds an interest as a result of its ownership of the Real Property; and

(xvii) all proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, the insurance proceeds and condemnation awards, and all proceeds of all of the foregoing.

The Real Property and all of the items described in paragraphs (a) through (q) above are hereinafter referred to collectively as the "Property."

For purposes of Utah Code Annotated §§57-1-25 and 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property. Trustor further agrees that none of the Property constitutes, or is the proceeds of, "farm products" as defined in Section 9-102(a)(34) of the Uniform Commercial Code of the State of Utah. To the extent that this Deed of Trust is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated §57-26-101, *et seq.* (the "Act"), and in the event of any conflict or inconsistency between the provisions of the terms and conditions of this Deed of Trust and the provisions of the Act, the provisions of the Act shall control.

ARTICLE I OBLIGATIONS SECURED

1.1. **Obligations Secured.** This Deed of Trust secures: (a) payment of the Minimum Return (as defined in the Operating Agreement) and any interest and other obligations associated therewith, according to the terms and provisions of the Operating Agreement payable to Beneficiary; (b) the payment of all other sums which are or may become owing under the Operating Agreement by Trustor to the Preferred Members of Trustor (as defined in the Operating Agreement); (c) the payment and performance of all of Trustor's indebtedness and obligations, now or hereafter incurred by Trustor, under the Loan Documents, including without limitation all principal due and all interest, prepayment charges, late charges, loan fees and other charges at any time accruing or assessed under the Note or any of the other Loan Documents, as the same may be extended, renewed, or modified; (d) payment and performance of all obligations of Trustor under this Deed of Trust, together with all advances, payments or other expenditures made by Beneficiary or Trustee as or for the payment or performance of any such obligations of Trustor; (e) payment and performance of all future advances and other obligations that the then record owner of the Real Property and/or the Improvements may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; (f) the payment of all sums advanced, paid or expended by Beneficiary under or pursuant to any provision of this Deed of Trust or any other Loan Document, or to protect the Property or any other security for the Loan; and (g) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes together with interest on each such advance, payment or expenditure at the highest rate of interest in effect under the Note (or at any higher default rate of interest specified in the Note if an Event of Default then exists) from the date of such advance, payment or expenditure until paid in full. All of the foregoing amounts shall be secured by this Deed of Trust to the same extent and with the

same priority as the initial advance of Loan proceeds made by Beneficiary. The term "**Secured Obligations**" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation.

ARTICLE II COVENANTS AND AGREEMENTS OF TRUSTOR

2.1. **Warranty of Title.** Trustor warrants, represents, covenants and agrees as follows: (a) Trustor holds fee simple marketable title to the Real Property and the Improvements with the full right and power to grant, convey and assign the Real Property and the Improvements; (b) the Real Property and the Improvements are free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for those exceptions and encumbrances that have been approved by Beneficiary as set forth in Exhibit B to this Deed of Trust (the "**Permitted Exceptions**"); (c) no other lien or encumbrance, whether superior or inferior to this Deed of Trust, shall be created or suffered to be created by Trustor without the prior written consent of Beneficiary, which may be granted or withheld in Beneficiary's sole and absolute discretion; (d) no default on the part of Trustor or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification; (e) complete and current copies of the Permitted Exceptions have been furnished to Beneficiary, and none of them have been or will be modified by Trustor without Beneficiary's prior written consent; (f) Trustor shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Beneficiary a copy of all notices of default under, violation of or other claim delivered in connection with the Permitted Exceptions; (g) after this Deed of Trust is recorded Beneficiary has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Trustor shall, from time to time, at the request of Beneficiary, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Beneficiary may request; and (h) Trustor shall forever warrant and defend title to the Real Property and the Improvements unto Beneficiary against all claims and demands of any other person whatsoever, subject only to nondelinquent taxes and assessments and the Permitted Exceptions.

2.2. **Nonagricultural Use; Commercial Investment.** Trustor represents and warrants to Beneficiary that (a) the Real Property is not used principally for agricultural purposes and (b) the Loan secured by this Deed of Trust was not made primarily for personal, family or household purposes.

2.3. **Use of Property.** Trustor represents and warrants to Beneficiary that the Real Property, the Improvements and their intended use by Trustor comply with all applicable Laws and restrictive covenants, conditions, and restrictions on the Real Property and pay all fees and charges in connection therewith. Unless required by applicable Laws or unless Beneficiary has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Real Property was intended at the time this Deed of Trust was executed. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Real Property, obtain a conditional use permit, subdivide the Real Property, or obtain site plan approval related to the Real Property without Beneficiary's prior written consent. As used herein, "**Laws**" means all federal, state, county, or municipal laws, statutes, ordinances, codes, decisions, judgments, decrees, rules, orders, writs, injunctions, permits, and regulations of any court or governmental authorities applicable to, or the decisions or orders of any courts having jurisdiction over, Trustor or the Property, now or hereinafter in force, including but not limited to all land use, zoning, subdivision, building, setback, health, traffic, flood control, fire safety, hazardous materials and underground storage tanks, and all laws and governmental requirements regarding access and facilities for handicapped or disabled persons.

2.4. **Community Association.** If the Real Property is subject to any community association, such as a homeowners association or a condominium association, Trustor shall comply with any and all applicable laws pertaining to the organization, operation, and management of such community association. Any instrument subjecting the Real Property to the governance of any community association shall comply with all applicable legal requirements and shall be subject to the review and approval of Beneficiary. If any reserve account is required to be established in connection with any community association, Trustor shall create and fund such reserve account as required by applicable law and shall indemnify, hold harmless, and defend Beneficiary for, from and against any claims related to the organization, operation, and management of such community association and any obligations pertaining to a reserve fund.

2.5. **Payment and Performance of Secured Obligations.** Trustor shall pay when due all sums which are now or which may become owing under the Note, the Operating Agreement, and any Loan Documents, and shall pay and perform all other Secured Obligations in accordance with their terms.

2.6. **Taxes, Utilities, Liens and Charges.**

2.6.1. **Taxes and Assessments.** Trustor shall pay prior to when due directly to the payee thereof all taxes and assessments (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Trustor shall promptly furnish to Beneficiary all notices or statements of amounts due under this subparagraph and all receipts evidencing such payments.

2.6.2. **Utilities.** Trustor shall pay when due all utility charges, fees, and assessments for services furnished the Real Property and the Improvements or incurred by or on behalf of Trustor in connection with, or that may become a charge or lien against, the Real Property and all other assessments or charges of a similar nature, public or private, affecting the Real Property or any portion thereof (collectively, "Utility Charges").

2.6.3. **Labor and Materials.** Trustor shall pay when due the claims of all persons supplying labor or materials to or in connection with the Real Property and the Improvements.

2.6.4. **Liens and Charges.** Trustor shall (a) pay all indebtedness secured by liens, encumbrances (whether superior or inferior to this Deed of Trust) and charges upon the Property or any part thereof as and when such indebtedness becomes due; (b) immediately pay in full and discharge all liens, encumbrances and charges that may be or appear to be superior to the lien of this Deed of Trust, except for any such liens, encumbrances or charges that have been approved by Beneficiary and are shown as exceptions to title in Beneficiary's title insurance policy; and (c) immediately cause any statutory lien for labor or materials or any other statutory or involuntary lien, encumbrance or charge that may arise against the Property to be removed and discharged, either by paying in full the amount claimed to be due by the lienor or by obtaining and recording a surety bond that by statute will result automatically in the removal and discharge of such lien, encumbrance or charge. Trustor shall have the right to contest the amount or validity in whole or in part of any lien, encumbrance or other charge against the Property by appropriate proceedings conducted in good faith and with due diligence, in which event Trustor, upon prior written notice to Beneficiary, may postpone or defer payment of such lien, encumbrance or other charge so long as (i) such proceedings shall operate to prevent the collection of the lien, encumbrance or other charge; (ii) neither the Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; and (iii) Trustor, before the date such lien, encumbrance or other charge becomes delinquent, gives such reasonable security as may be requested by Beneficiary to ensure payment thereof and prevent any forfeiture or loss of the Real Property or any part thereof. If Trustor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same by paying the

amount claimed to be due or by procuring discharge of such lien in such other manner as may be authorized by Law.

2.6.5. Taxes, Assessments and Other Charges Imposed on Beneficiary. If, at any time after the date of this Deed of Trust, any law is enacted or changed (including any interpretation thereof) which subjects Beneficiary to any increase in any tax (except federal income taxes), assessment or other charge, in any form measured by or based on any portion of the indebtedness secured by this Deed of Trust, Trustor shall pay such increased amount to Beneficiary on demand; provided that if any such payment would be unlawful, Beneficiary may declare all accrued interest and the entire principal balance of the Loan immediately due and payable.

2.7. Maintenance, Repair, Alterations; Use and Operation. Trustor hereby represents and warrants that the Real Property is not subject to any physical conditions that may limit or curtail development of the Real Property, including, but not limited to, the presence of any collapsible or expandable soils, clay, Hazardous Materials, wetlands, seismic hazards, or endangered species. Trustor further represents and warrants that the Improvements are in good, clean and safe condition, in compliance with all applicable Laws, and free from damage caused by fire or other casualty. Trustor shall (a) keep the Property in good condition and repair and, in the event of any damage, injury or loss, restore or repair promptly and in a good and workmanlike manner any damaged portion of the Property to the equivalent of its original condition; (b) not commit or permit waste, impairment or deterioration of the Property; (c) not remove, demolish or materially alter, or permit to be removed, demolished or materially altered, any improvement now or hereafter comprising part of the Real Property, except as required by applicable Laws or any Loan Document, or with the prior written consent of Beneficiary, which consent shall not be unreasonably withheld as to minor structural alterations if Trustor furnishes plans and assurances that the work will be completed in good workmanlike quality and Beneficiary determines in its reasonable business judgment that the value of the Property will not be materially and adversely affected; (d) comply in all material respects with all, and not suffer or permit to exist any material violation of any, of the following that may affect the Property or pertain to acts committed or existing thereon: (i) Laws; (ii) covenants, conditions and restrictions and servitudes (including those contained in any declaration and constituent documents of any condominium, cooperative, planned development or other common interest project), whether public or private, of every kind and character; and (iii) requirements of insurance companies and all bureaus or agencies that establish standards of insurability; (e) obtain, keep in effect and perform all obligations under all permits, licenses, rights, privileges, franchises, concessions, maps, bonds and other agreements required by applicable Laws or granted to or contracted for by Trustor for the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, sale, development, financing or refinancing of, or conduct of business on the Property; and (f) not take any action that might invalidate any insurance carried on the Property. Trustor shall not remove any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property at any time without Beneficiary's prior written consent unless actually replaced by an article of equal suitability which is owned by Trustor free and clear of any lien or security interest. Trustor shall generally operate and maintain the Property in a commercially reasonable manner.

2.8. Right of Entry. Beneficiary is hereby authorized to enter the Real Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Real Property to determine Trustor's compliance with this Deed of Trust.

2.9. Insurance.

2.9.1. Insurance Coverage. Trustor shall keep the Real Property and the Improvements insured against loss or damage by fire and perils covered by a commercial property insurance policy (causes of loss – special perils form) for the full replacement value of any Improvements and such other risks (other than flood unless the Real Property is located within a flood plain), along with a "replacement cost endorsement" without reduction for depreciation, an "ordinance or law endorsement", and a fluctuating value endorsement with a waiver of the coinsurance clause (or an agreed amount

endorsement with an inflation guard endorsement), and any other endorsements that Beneficiary may request. The form and substance of the policy and any endorsements shall be reasonably satisfactory to Beneficiary. If any Improvements are leased, Trustor shall maintain a business income insurance policy insuring against possible loss of rents for a period of time not less than twelve (12) months. Beneficiary shall be named as a loss payee on Trustor's commercial property insurance and business income insurance. Trustor shall also maintain a commercial general liability insurance policy with limits acceptable to Beneficiary, which shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Beneficiary shall be endorsed as an additional insured on Trustor's commercial general liability insurance policy pursuant to an endorsement acceptable to Beneficiary. Trustor shall maintain such additional insurance policies, endorsements, or coverages as may be requested by Beneficiary. The insurance policies are to be carried with such insurer or insurers, and in form and amounts, as may from time to time be approved by Beneficiary. Trustor shall provide Beneficiary with copies of all insurance policies and endorsements and any renewals thereof together with satisfactory evidence of payment of same. Trustor shall also provide Beneficiary with certificates of insurance evidencing such insurance coverage in a form satisfactory to Beneficiary. Trustor shall not carry separate insurance concurrent in kind or form or contributing in the event of loss, with any insurance required hereunder. Except as the same may otherwise be paid under Subsection 2.21, Trustor shall pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Trustor shall furnish to Beneficiary a copy of a renewal policy in a form acceptable to Beneficiary, together with evidence that the renewal premium has been paid. As security for the Secured Obligations, Trustor hereby assigns to Beneficiary all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

2.9.2. Application of Insurance Proceeds. In the event of any material loss of any Improvements, Trustor shall give prompt written notice thereof to the insurance carrier and Beneficiary. Subject to the rights granted to the holder of the first Deed of Trust, Trustor hereby authorizes Beneficiary as Trustor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Beneficiary shall have no obligation to do so. Beneficiary shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

2.9.2.1. The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note or payment pursuant to the Operating Agreement shall be without the imposition of any prepayment fee otherwise payable under the Note or the Operating Agreement, but shall not extend or postpone the due dates of the installment payments under the Note or the Operating Agreement, or change the amounts thereof; or

2.9.2.2. The reimbursement of Trustor, under Beneficiary's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Beneficiary may, at its option, condition the reimbursement on Beneficiary's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Beneficiary may reasonably require.

Nothing herein contained shall be deemed to excuse Trustor from restoring, repairing or maintaining the Property as provided for herein, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

2.9.3. Application of Insurance Proceeds by Trustor. Notwithstanding the above, Trustor, rather than Beneficiary, shall have the right to direct the application of insurance proceeds to payment of the Secured Obligations or to repair or restoration of the Property upon satisfaction of the following conditions:

2.9.3.1. There is then no Event of Default nor any event or condition which would be an Event of Default if not cured within the time allowed.

2.9.3.2. If the proceeds are to be applied to repair or restoration then in addition to the matters required under Section 2.9.2.2 above, Beneficiary shall have approved each of the following with respect to the repair or restoration: (i) the construction contract, and if required by Beneficiary, payment and performance bonds with dual obligee rider; (ii) evidence that the insurance proceeds are adequate to restore the Real Property and the Improvements to its condition immediately prior to the casualty, and if insufficient, the deficiency shall be deposited with Beneficiary for disbursement prior to disbursement of insurance proceeds; (iii) evidence that Trustor has funds sufficient to pay operating expenses, taxes, debt service and other carrying costs of the Real Property and the Improvements through the period of repair or restoration; (iv) evidence that upon such repair or restoration the Real Property and the Improvements will be in compliance with all applicable laws, ordinances and regulations; (v) evidence that such repair or restoration of the Real Property and the Improvements will be completed at least thirty (30) days before the current maturity date under the Operating Agreement; and (vi) evidence that upon the completion of any such repair or restoration the Real Property and the Improvements will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations.

2.9.3.3. Trustor shall execute and deliver to Beneficiary such additional security documents and instruments as Beneficiary deems necessary to continue and to perfect Beneficiary's security interests in and liens on the Real Property.

Any funds remaining after restoration shall be applied in reduction of the last amounts of principal or accrued interest (at Beneficiary's election) due under the Note.

2.10. **Condemnation.** Trustor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Trustor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All such awards, payments, damages, direct, consequential and otherwise, claims and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Beneficiary, and all proceeds of any such awards, payments, damages or claims shall be paid to Beneficiary. Beneficiary shall apply any such proceeds in the manner and upon the terms and conditions set forth in Section 2.9 relating to the application of insurance proceeds.

2.11. **Actions Affecting Property; Duty to Protect Beneficiary and Security.** Trustor shall give notice to Beneficiary of and shall, at its own expense, appear in, prosecute, defend and contest (with counsel approved by Beneficiary) any action or proceeding that purports to affect the Property or any portion thereof or Trustor's title thereto, the validity or priority of the lien of this Deed of Trust, or the rights, powers, liabilities or obligations of Beneficiary or Trustee. Without in any way mitigating or excusing Trustor's performance of the foregoing obligations, Beneficiary shall have the right, but not the obligation, to participate to whatever extent Beneficiary may desire, with counsel of Beneficiary's choice, in any such action or proceeding in which Beneficiary is named or where Beneficiary believes its interests are threatened or in jeopardy. If there is an uncured Event of Default, or Trustor fails to perform any of the Secured Obligations, Beneficiary or Trustee may, at their option, make any appearances, disburse any sums, pay or settle any claims that have resulted in or may result in a lien of any portion of the Property, make any entries upon the Real Property and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Trustor's failure to perform the Secured Obligations (without waiving such default by Trustor), or (iii) otherwise protect Beneficiary's or Trustee's

interests. Trustor shall pay all losses, damages, fees, costs and expenses incurred by Beneficiary and Trustee in taking such actions; including, without limitation, reasonable legal fees. Trustor shall indemnify, defend and hold harmless Beneficiary, any successor to Beneficiary, any assignee of Beneficiary's interest in the Loan, and the directors, officers, shareholders, employees, and agents of such entities and their respective heirs, executors, administrators, legal representatives, successors and assigns from and against all claims, demands, liabilities, losses, obligations, judgments, damages, costs and expenses of any nature (including court costs and attorneys' fees) that Beneficiary may directly or indirectly suffer or incur in connection with any such action or proceeding. As used herein, the term "proceeding" shall include litigation (whether by way of complaint, answer, cross-complaint, counterclaim or third-party claim), arbitration and administrative hearings or proceedings.

2.12. **Acceleration Upon Certain Transfers and Other Events**. Neither the Property nor any part thereof or interest therein shall be encumbered, pledged, mortgaged, hypothecated, liened, sold (by contract or otherwise), conveyed, leased (except as provided in this Deed of Trust) or otherwise transferred by Trustor; nor shall there be any change in (i) the ownership or control of any of the membership interests in Trustor, or (ii) the ownership or control of any of the stock, membership interests, general partnership interests or any other beneficial interests in any corporation, partnership or other entity that has any ownership interest in Trustor. Any such action without Beneficiary's prior written consent shall be deemed to increase the risk of Beneficiary and shall constitute an Event of Default. Beneficiary may, in its sole discretion, consent to any such action subject to such terms and conditions as Beneficiary may require. Beneficiary may, at its option, declare all of the sums secured by this Deed of Trust to be immediately due and payable upon (a) any sale, encumbrance, pledge, hypothecation, or other transfer of the Property or any part of or interest in the Property, whether voluntary, involuntary or by operation of law (other than a sale upon which Beneficiary is required by the express terms of the Note to request from Trustee a reconveyance of that part of the Property being sold); (b) any sale, encumbrance, pledge, hypothecation, or other transfer of all or part of any direct or indirect interest in Trustor, whether voluntary, involuntary or by operation of law and whether occurring in a single transaction or as the result of a series of transactions; (c) the dissolution, liquidation or termination of Trustor; or (d) any other sale, encumbrance, pledge, transfer or Event of Default or other event that, under the terms of the Note, this Deed of Trust or any other Loan Document, gives Beneficiary the right to declare the Loan immediately due and payable. If all of the sums secured by this Deed of Trust are not immediately paid in full after any such declaration by Beneficiary, then Trustor shall be in default under this Deed of Trust and Beneficiary may invoke all of the remedies available under this Deed of Trust and the other Loan Documents as well as all additional remedies available at law or in equity.

2.13. **Required Notices to Beneficiary**. Trustor shall give Beneficiary prompt written notice of each of the following: (a) the occurrence of any fire or other casualty affecting the Property, whether or not insured; (b) commencement of or receipt of notice of any action described in Section 2.9, Section 2.10 or Section 2.11; (c) any transfer or event or proposed transfer or event subject to Section 2.12; (d) receipt of notice from any governmental authority relating to the construction of the improvements on or affecting the use, operation, maintenance or occupancy of the Property or the conduct of business thereon; (e) receipt of any notice claiming a default under any obligation secured by any deed of trust or other lien, encumbrance or charge on the Property or any part thereof, whether senior or junior to the lien of this Deed of Trust; (f) the commencement or threat of any action, suit, claim, or proceeding against or investigation of Trustor or the Property that could (i) adversely affect Trustor or the Property, (ii) impair the validity, effectiveness or enforceability of the Loan Documents, or (iii) impair Trustor's ability to perform its obligations under the Loan Documents; and (g) the occurrence of any Event of Default or any event that, with the passage of time, the giving of notice or both, would become an Event of Default. Trustor shall furnish Beneficiary a copy of any notice received by Trustor of which Trustor is required by this Section to notify Beneficiary.

2.14. **Further Assurances**. Trustor shall, from time to time, at Beneficiary's request, execute and deliver to Beneficiary, and when appropriate, acknowledge, file and/or record such instruments, documents and agreements, and take such actions as Beneficiary may deem necessary or appropriate for

the preservation, continuance, and perfection of the security of this Deed of Trust, to evidence or confirm the lien of this Deed of Trust on any of the Property, or otherwise to effectuate the intent and provisions of this Deed of Trust. Upon any failure by Trustor to do so, Beneficiary may make, execute and record any and all such instruments, documents and agreements for and in the name of Trustor, all at the sole expense of Trustor, and Trustor hereby appoints Beneficiary the agent and attorney-in-fact of Trustor to do so, this appointment being coupled with an interest and being irrevocable. Without limitation of the foregoing, Trustor irrevocably authorizes Beneficiary at any time and from time to time, for so long as the Loan is outstanding, to file any initial financing statements, amendments thereto and continuation statements deemed necessary or desirable by Beneficiary to establish or maintain the validity, perfection and priority of the security interests granted in this Deed of Trust and the other Loan Documents, and Trustor ratifies any such filings made by Beneficiary prior to the date hereof.

2.15. **Filing and Recording Fees.** Trustor shall pay all filing, registration and recording fees, all expenses incident to the preparation, execution and acknowledgment of this Deed of Trust or any other Loan Document, and all federal, state, county, and municipal fees, charges, assessments, and/or taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the Loan Documents.

2.16. **Compliance with Environmental Laws.**

2.16.1. **Definitions.** The following terms used in this Deed of Trust shall have the meanings set forth below:

2.16.1.1. **"Environmental Law"** means any federal, state or local law, ordinance or regulation or any rule adopted or guideline promulgated pursuant thereto, or any order, ruling or directive of any federal, state, local, executive, judicial, legislative, administrative or other governmental agency, board or public authority relating to health, industrial hygiene, the environment, or the occupational or environmental conditions on, under or about the Property (including ambient air, soil, soil vapor, groundwater, surface water or land use), whether now or hereafter in force.

2.16.1.2. **"Hazardous Material"** means any chemical, substance, object, condition, material or waste that is or may be hazardous to human health or safety or to the environment, due to its radioactivity, ignitability, corrosivity, flammability, reproductive toxicity, infectiousness or other harmful properties or effects, including all chemicals, substances, materials or wastes that are now or hereafter may be regulated in any manner, classified as dangerous, hazardous or toxic, or as pollutants or contaminants, or to which exposure is prohibited or restricted by any federal, state or local governmental agency, board or public authority or by any Environmental Law, and any petroleum products or toxic mold.

2.16.1.3. **"Hazardous Materials Claims"** means any and all claims, causes of action, demands, liens, losses, damages (including all foreseeable and unforeseeable consequential damages), injuries to persons and/or property, judgments, penalties, fines, suits, proceedings, defenses, offsets, obligations, duties, costs (including all remedial, removal, response, abatement, cleanup, compliance, legal, investigative, planning and monitoring costs and other related costs, expenses and disbursements, such as attorneys' and experts' fees), charges, expenses and other liabilities whether instituted, made, sought, brought, imposed, completed, threatened, incurred or suffered, directly or indirectly arising out of or attributable to (A) the use, generation, manufacture, production, transportation, treatment, storage, release, threatened release, discharge, disposal, or presence or suspected presence of, or exposure of any person or property to, a Hazardous Material on, under, or about the Property; (B) the migration, escape, seepage, leakage, spillage, emission or release of a Hazardous Material to or from the Property or any other property legally or beneficially owned by Trustor; or (C) the violation of, or failure to comply with, any Environmental Law by Trustor or any predecessor in title to Trustor.

2.16.1.4. **"Remedial Work"** means, without limitation, any response, remediation, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or

otherwise remediate any Hazardous Material; any actions to prevent, cure or mitigate any release of any Hazardous Material; any action to comply with any Environmental Law or with any permits issued pursuant thereto (if such permits are required); and any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Material.

2.16.2. Compliance with Environmental Laws. Trustor shall at all times keep and maintain the Property in substantial compliance with, and shall not cause or permit the Property or any activities conducted thereon to be in material violation of, any Environmental Law, and shall give all notices and warnings and make all disclosures required by Environmental Laws. Trustor shall not, and shall not permit any tenant, lessee or other occupant of, or any contractor, subcontractor or any other person present on the Property to use, generate, manufacture, store, produce, distribute, treat, release, discharge, dispose of or otherwise permit the presence of, on, under or about the Property or transport to or from the Property any Hazardous Materials in a manner or quantity so as to be in material violation of any Environmental Law.

2.16.3. Notification to Beneficiary. Trustor shall immediately advise Beneficiary in writing of Trustor's discovery of or receipt of notice of (i) any and all Hazardous Materials Claims; (ii) any use, generation, manufacture, production, release, discharge, treatment, storage, disposal or presence of Hazardous Materials, or substantial threat of any of the foregoing, on, under or about the Property; (iii) any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to become subject to any restrictions on ownership, occupancy, transferability or use under any Environmental Law; and (iv) any Remedial Work that Trustor proposes to undertake. Trustor shall also provide to Beneficiary copies of all notices received by Trustor from governmental authorities relating to any of the foregoing and all responses to such notices, including all reports, studies, analyses, data, test results, consultants' reports, laboratory analyses and/or remedial action plans and other materials prepared by or on behalf of Trustor. Trustor shall not, without Beneficiary's prior written consent, enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim if such settlement, consent or compromise might, in Beneficiary's judgment, impair the value of Beneficiary's security.

2.17. Anti-Terrorism Representation. Neither Trustor, nor any guarantor, or any of their respective agents when such agent is acting or benefiting in any capacity in connection with the Loan, any letters of credit or other transactions hereunder shall (a) conduct any business or engage in any transaction or dealing with any Blocked Person (as defined below), including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) engage in or conspire to engage in any transaction relating to any property or interests in property blocked pursuant to Executive Order No. 13224; or (c) engage in or conspire to engage in any transaction that violates, evades or avoids, or has the purpose of violating, evading or avoiding, or attempts or intends to violate, evade or avoid, any of the prohibitions set forth in Executive Order No. 13224, the USA Patriot Act or any other Anti-Terrorism Law (as defined below). Trustor shall deliver to Beneficiary any certification or other evidence requested from time to time by the Beneficiary in its sole discretion, confirming Trustor's compliance with this Section 2.17.

2.17.1. As used herein, "Anti-Terrorism Laws" shall mean any Laws relating to terrorism or money laundering, including, without limitation, (i) Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001), (ii) the USA Patriot Act, (iii) the Laws comprising or implementing the Bank Secrecy Act, and (iv) the Laws administered by the United States Treasury Department's Office of Foreign Asset Control, as any of the foregoing Laws may from time to time be amended, renewed, extended, or replaced.

2.17.2. As used herein, a "Blocked Person" means:

2.17.2.1. a Person (as defined below) that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

2.17.2.2. a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

2.17.2.3. a Person or entity with which any Lender is prohibited by any Anti-Terrorism Law from dealing or otherwise engaging in any transaction;

2.17.2.4. a Person or entity that supports, engages in, or conspires to, attempts to or intends to engage in, "terrorism" as defined in Executive Order No. 13224, or engages in or conspires, attempts or intends to engage in any transaction that violates, evades or avoids, or has the purpose of violating, evading or avoiding, or attempts or intends to violate, evade or avoid, any of the prohibitions set forth in any Anti-Terrorism Law;

2.17.2.5. a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

2.17.2.6. a person or entity who is affiliated or associated with a person or entity listed above.

2.17.3. As used herein, "**Person**" shall mean any individual, corporation, partnership (whether general or limited), limited liability company, limited liability partnership, association, joint-stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof, or any other entity.

2.18. **Books and Records on Property.** Trustor shall keep and maintain at Trustor's address stated above, or such other place as Beneficiary may approve in writing, books of account and records adequate to reflect correctly the results of operation of the Property and copies of all written contracts, leases and other documents affecting the Property. Such books, records, contracts, leases and other documents shall be subject to examination, inspection and copying at any reasonable time by Beneficiary. Trustor shall furnish to Beneficiary, within ten (10) days after Beneficiary's request therefor, the following documents, each certified to Beneficiary by Trustor as being true, correct and complete: (a) copies of all leases and other agreements for occupancy or use of all or any portion of the Real Property, (b) a rent roll for the Real Property, showing the name of each tenant, and for each tenant, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options, (c) copies of the most recent real and personal property tax statements for the Property, and (d) copies of the most recent statements for the insurance coverage maintained pursuant to this Deed of Trust.

2.19. **Indemnification.** Trustor hereby indemnifies, holds harmless, and agrees to defend Beneficiary (with counsel selected by Beneficiary) in accordance with the following:

2.19.1. **General Indemnification.** Trustor shall indemnify and hold Beneficiary harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to, the Note, the Operating Agreement, this Deed of Trust, and any other Loan Documents, or the construction, use or occupation of the Real Property, or any part thereof.

2.19.2. **Mechanics Liens.** If Beneficiary or the Property is held liable or could be held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor, or material furnished in connection with or arising from the construction of any building, fixture and improvements, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorneys' fees and costs.

2.19.3. Hazardous Materials. Trustor hereby agrees to indemnify, hold harmless and defend Beneficiary, its directors, officers, employees, agents, successors and assigns from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of (a) the presence on or under the Real Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under or from the Real Property, or (b) any activity carried on or undertaken on or off the Real Property, whether prior to, during, or after the period of time this Deed of Trust is recorded against the Real Property, and whether by Trustor or any predecessor in title or any employees, agents, contractors or subcontractors of Trustor or any predecessor in title, or any third persons at any time occupying or present on the Real Property, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Real Property. The foregoing indemnity shall further apply to any residual contamination on or under the Real Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. Trustor hereby acknowledges and agrees that, notwithstanding any other provision of this Deed of Trust or any of the other Loan Documents to the contrary, the obligations of Trustor under this Section shall be unlimited personal obligations of Trustor and shall survive any foreclosure under this Deed of Trust, any transfer in lieu thereof, and any satisfaction of the obligations of Trustor in connection with the financing provided by Trustor.

2.20. Off-Set. All sums payable by Trustor under the Note, the Operating Agreement, this Deed of Trust and any other Loan Documents, shall be paid without notices, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Property or any part thereof; (b) any destruction or prevention of or interference with any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (e) any claim which Trustor has or might have against Beneficiary; (f) the occurrence of an Event of Default or any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Deed of Trust or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

2.21. Deposits.

2.21.1. Making of Deposits. If required by Beneficiary, Trustor shall, at the time of making each payment under the Operating Agreement, deposit with Beneficiary a sum, as estimated by Beneficiary, equal to (i) the taxes and special assessments next due on the Real Property and Improvements, and (ii) the premiums that will next become due on insurance policies as may be required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such taxes, special assessments and premiums will become delinquent. Beneficiary may require Trustor to deposit with Beneficiary, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Trustor or the Property as Beneficiary reasonably deems necessary to protect Beneficiary's interests ("**Other Impositions**"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Beneficiary's option. If required by Beneficiary, Trustor shall promptly deliver to Beneficiary all bills and notices with respect to any taxes, assessments, premiums and Other Impositions. Unless Trustor and Beneficiary otherwise agree in writing, Beneficiary shall not be required to pay Trustor any

interest, earnings or profits on any sums deposited with Beneficiary. All sums deposited with Beneficiary under this Section 2.21 are hereby pledged as security for the Secured Obligations.

2.21.2. Application of Deposits. All such deposited sums shall be held by Beneficiary and applied in such order as Beneficiary elects to pay such taxes, assessments, premiums and Other Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 2.21 is solely for the added protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. Each transfer of the Property in accordance with this Deed of Trust shall automatically transfer to the transferee all rights of Trustor with respect to any funds deposited hereunder. Upon payment in full of the Secured Obligations, Beneficiary shall promptly refund to Trustor the remaining balance of any deposits then held by Beneficiary.

2.21.3. Adjustments to Deposits. If the total deposits held by Beneficiary exceed the amount deemed necessary by Beneficiary to provide for the payment of such taxes, assessments, premiums and Other Impositions, such excess shall, provided there is no Event of Default or any event which would constitute an Event of Default if not cured within the time allowed, be credited by Beneficiary on the next due installment or installments of such deposits. If at any time the total deposits held by Beneficiary are less than the amount deemed necessary by Beneficiary to provide for the payment of such taxes, assessments, premiums and Other Impositions, Trustor shall promptly deposit the deficiency with Beneficiary after receipt of written demand from Beneficiary.

2.21.4. Conditional Waiver. Notwithstanding the foregoing, Beneficiary shall not require the payment of reserves as provided in this Section until a delinquency occurs in the payment of such taxes, assessments, premiums and Other Impositions, or until the occurrence of an Event of Default.

ARTICLE III ASSIGNMENT OF REVENUES, LEASES, AND PURCHASE AGREEMENTS

3.1. Absolute and Unconditional Assignment. Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all Revenues and all of Trustor's rights under and interest in any rents under any Lease, the Leases, and the Purchase Agreements. This assignment is made concurrently with the granting by Trustor to Beneficiary of a security interest in the Revenues, Leases, and the Purchase Agreements pursuant to Article IV, which security interest shall be subject and subordinate to this assignment. This assignment is an absolute assignment and not an assignment as additional security, and Beneficiary's right to the Revenues is not contingent upon, and may be exercised without Beneficiary's taking possession of, the Property. This assignment shall not confer upon Beneficiary the right to possession of the Property except as provided in Section 3.4. Neither this assignment nor any action taken by Beneficiary pursuant to this assignment shall: (a) impose upon Beneficiary any duty to produce Revenues from the Property; (b) cause Beneficiary to be a "mortgagee in possession" for any purpose unless Trustor and Beneficiary, subsequent hereto, shall enter into a written agreement for Beneficiary to enter into possession as a beneficiary in possession; or (c) impose upon Beneficiary any responsibility for (i) performing any obligations of the lessor under any Lease or as seller under any Purchase Agreement, (ii) any waste committed by lessees or any other parties, (iii) any dangerous or defective condition of the Property, (iv) any negligence in the management, maintenance, repair or control of the Property, or (v) any security deposits paid to the lessor under any Lease by the lessee unless such security deposits are delivered to Beneficiary.

3.2. Leases. The lien of this Deed of Trust shall be senior to any new Lease and Purchase Agreement and to any existing Lease and Purchase Agreement that hereafter may be extended, amended, or supplemented unless Beneficiary elects for the lien of this Deed of Trust to be subordinate to any particular new, extended, amended, or supplemented Lease by delivering written notice of such

election to Trustor at any time before the date of any judicial or non-judicial foreclosure sale hereunder or the date of any conveyance of the Real Property in lieu of foreclosure. Any such notice need not be recorded to be effective. Trustor shall furnish, from time to time at Beneficiary's request, (a) a rent schedule for the Property, certified by Trustor, showing the name of each lessee and, for each lessee, the unit occupied, the Lease expiration date, the amount of the security deposit, the rent, the amount of any prepaid rent and the period for which such rent was prepaid, any unexpired free rent period and any renewal or extension options; and/or (b) a schedule of all lots or parcels within the Real Property under contract, including the name of the purchaser, the purchase price, the real estate commissions and other costs payable by Trustor related to such transaction, and the proposed settlement/closing date.

3.3. **Collection and Receipt of Revenues.** Subject to the terms and conditions of this Deed of Trust, including, but not limited to Section 6.5, Beneficiary hereby grants to Trustor a license to collect, receive, hold, use and disburse the Revenues as they become due and payable, and to exercise the rights of the lessor under the Leases, until the occurrence of an Event of Default. Trustor hereby authorizes and directs each and every lessee named in a Lease or any other or future lessee or occupant of the Property or any part thereof, upon receipt of written notice from Beneficiary, to pay all Revenues to Beneficiary, and to continue to do so until otherwise notified in writing by Beneficiary.

3.4. **Remedies.** Upon the occurrence of an Event of Default, the license granted pursuant to Section 3.3 shall automatically terminate, and upon such termination, regardless of the adequacy of Beneficiary's security for the indebtedness secured by this Deed of Trust, Beneficiary may:

3.4.1. Sue for, collect and retain the Revenues (including those past due and unpaid) without notice to or demand upon Trustor or lessees under any of the Leases, and without taking possession of the Property, and demand payment from Trustor of all Revenues collected by Trustor from the date on which the Event of Default occurred, which shall, from and after the occurrence of an Event of Default, be held by Trustor in trust for Beneficiary;

3.4.2. Send a notice to any lessee or tenant to pay rent directly to Beneficiary and to exercise any and all other remedies available under the Utah Uniform Assignment of Rents Act (Utah Code Annotated §57-26-101 *et seq.*);

3.4.3. In person, by an agent, or by a court appointed receiver, enter upon and take possession of the Property or any part thereof, and in so doing, assume control of the use, operation, repair and maintenance thereof and conduct of business thereon and do any or all of the following: (i) exclude Trustor and Trustor's agents and employees from the Property; (ii) sue for and collect the Revenues; (iii) complete any construction that may be in progress; (iv) do such maintenance and make such repairs and alterations as Beneficiary or the receiver deems necessary; (v) use all stores of materials, supplies and equipment on the Property and replace such items at the expense of the receivership estate; (vi) pay all taxes and other impositions, insurance premiums, Utility Charges and any and all other charges, costs and expenses of operating the Property, and the cost of maintenance and repair of the Property; (vii) execute, cancel or modify Leases or contracts providing for management, maintenance or other services rendered to the Property; and (viii) generally do anything that Trustor could legally do if Trustor were in possession of the Property, on such terms as Beneficiary shall deem appropriate, in its sole and absolute discretion, to protect and preserve the security of this Deed of Trust. All expenses incurred by Beneficiary or the receiver shall constitute part of the indebtedness secured hereby. Beneficiary and the receiver shall be entitled to have access to those books and records of Trustor that contain information necessary to enable Beneficiary or the receiver to manage and operate the Property. Trustor hereby agrees that it will do nothing to impair Beneficiary's or the receiver's ability to collect and retain the Revenues and that any lessee occupying the Property or any part thereof may pay any and all Revenues or other charges directly to Beneficiary or the receiver upon notice from Beneficiary without the necessity of any notice from Trustor; and/or

3.4.4. Exercise any other rights or remedies available under applicable Law, in equity, or under the Loan Documents.

3.5. **Application of Revenues.**

3.5.1. The Revenues collected by Beneficiary or the receiver shall be applied: (i) first, to payment of the costs and expenses of the receivership, including attorneys' fees incurred by the receiver, borrowings of the receiver, receivers' fees, premiums on receiver's bonds, costs of repairs of the Property, taxes and other impositions, insurance premiums, Utility Charges and other costs, expenses and charges of operating the Property, and the costs of discharging any obligation or liability of Trustor as lessor of the Property; (ii) second, to payment of the reasonable attorneys' fees and other expenses incurred by Beneficiary in connection with the action and proceedings in which the receiver was appointed; and (iii) third, to payment of the indebtedness secured by this Deed of Trust.

3.5.2. If the Revenues are insufficient in amount to defray all costs and expenses of the receivership, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of Trust.

3.5.3. Neither the entry into possession of the Property by Beneficiary, its agent or a receiver pursuant to Section 3.4 nor any application of Revenues pursuant hereto shall cure or waive any Event of Default hereunder or invalidate any notice of default under this Deed of Trust or any action taken pursuant hereto.

3.6. **Reassignment of Revenues.** The recordation in the official records of the county in which the Real Property is located of a full reconveyance of this Deed of Trust shall operate as a reassignment of Revenues and Leases to the person or persons legally entitled thereto, unless such reconveyance expressly provides to the contrary.

3.7. **Beneficiary Not Liable.** Beneficiary shall not be liable for any loss sustained by Trustor resulting from Beneficiary's failure to let the Property or any part thereof, sell any lots or parcels located within the Real Property, or from any other act or omission of Beneficiary in managing the Property, unless such loss is caused by the willful misconduct and bad faith of Beneficiary. Beneficiary shall not be obligated to perform or discharge, nor does Beneficiary undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this assignment, and Trustor agrees to indemnify Beneficiary for, and to hold Beneficiary harmless from, any liability, loss or damage that may be incurred under the Leases or under or by reason of this assignment and from any claims and demands that may be asserted against Beneficiary by reason of any alleged obligations or undertakings to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should Beneficiary incur any such liability under the Leases or under or by reason of this assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be reimbursed by Trustor to Beneficiary immediately upon demand, and upon failure of Trustor to make such reimbursement within five (5) days after the date of such demand, the unpaid portion thereof, while still immediately due and payable, shall bear interest at the rate of interest then in effect under the Note.

ARTICLE IV
UTAH UNIFORM COMMERCIAL CODE
SECURITY AGREEMENT

4.1. **Security Interest.** Trustor hereby assigns and grants to Beneficiary a security interest in the following described property (collectively the "Personalty"), whether now or hereafter existing, and in which Trustor now has or hereafter obtains any right, title, estate or interest, but only to the extent of Trustor's ownership interest therein, together with all additions and accessions thereto and all rents and proceeds thereof:

4.1.1. Tangible Personal Property. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: (a) all goods, inventory, specifically including, without limitation, materials, furnishings and supplies, whether stored on or off the Property, delivered to the Property for incorporation or use in any construction, renovation, operation or maintenance of the Property or the Improvements, supplies, furnishings, construction materials, equipment, vehicles, machinery, appliances, including attached and unattached appliances, and other tangible personal property and fixtures located in or upon the Property or the Improvements and used or useable in connection therewith, or to be used in the construction, reconstruction, remodeling, or repair of any of the Improvements now or hereafter located upon the Property; (b) all furniture, fixtures and equipment as equipment is defined in the Uniform Commercial Code, wherever located, and all related right, title and interest of Trustor, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein; (c) all architectural, engineering, development, construction and construction cost guarantee contracts or bonds entered into in connection with the improvement of the Property, all plans and specifications, building or use permits, subdivision plats and any related subdivision development requirements and specifications prepared by the engineer and architect thereunder, relating to the construction, development, ownership or maintenance of the Property or the Improvements; (d) all engineering reports, surveys, soil reports and other documents relating to the Property; (e) all modifications, parts, accessories, and accessions to each and all of the foregoing and all renewals and replacements thereof; and (f) all proceeds of each of the foregoing.

4.1.2. Permits, Names, Rights, Etc. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: (a) all contracts, permits, franchises, privileges, grants, consents, licenses, authorizations, and approvals heretofore or hereafter granted by the United States, by the State of Utah or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities, to or for the benefit of Trustor and utilized in connection with the Property and the Improvements thereon or to be constructed thereon, to the extent the same are transferable and subject to all terms, covenants and conditions thereof and to applicable law; (b) all names under or by which the Property or any of the Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all service marks, trademarks and goodwill in any way relating to Trustor's ownership and operation of the Property; (c) all contracts, contract rights, rights to payment, general intangibles, documents, instructions, accounts, water stock arising in connection with Trustor's ownership, legal or equitable claims, judgments, and awards now or hereafter accruing to the benefit of Trustor respecting the Property and the Improvements, specifically including, without limitation, all architectural, development and construction contracts, and all construction cost guarantee contracts relating to the Property or the Improvements; (d) all shares of stock, partnership interests, or other evidence of ownership of any part of the Property or the Improvements that is owned by Trustor in common with others; (e) all documents and rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and (f) all amendments, modifications, additions, accessions, substitutions, replacements and renewals to any of the foregoing and all proceeds of the foregoing, whether voluntary or involuntary, including without limitation, insurance proceeds.

4.1.3. Awards. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: (a) all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property, the Improvements or any portion of the Improvements, or of any other Improvements now or hereafter situate thereon or any estate or easement in the Property (including any awards for change of grade of streets); (b) all insurance policies and all proceeds of insurance paid on account of any partial or total destruction of the Improvements or any portion thereof; (c) all causes of action and recoveries for any loss or diminution in the value of the Property or the Improvements; and (d) all proceeds of each of the foregoing.

4.1.4. Plans and Utility Taps. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: All Plans and any and all replacements, modifications, and amendments thereto and any and all contracts, agreements or commitments between Trustor and any utility company, water company or user association, or telephone company, to furnish electricity, natural gas or oil, telephone, sewer, water or other such services, or to provide hook-ups, connections, lines or other necessary taps to the Property and the Improvements thereon. Trustor hereby irrevocably appoints Beneficiary as Trustor's true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any act in the name and on behalf of Trustor necessary to maintain and continue all contracts, agreements or commitments with any such utility company and, otherwise, to perform all acts necessary to assure uninterrupted utility service to the Property and the Improvements thereon.

4.1.5. Loan Proceeds. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all proceeds of the Loan made by Beneficiary to Trustor for construction of the Improvements which proceeds are held by Beneficiary, whether or not disbursed, and all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of the Improvements to secure any and all of Trustor's obligations to Beneficiary.

4.1.6. Contracts. All right, title, interest and estate of Trustor, now owned or hereafter acquired, under any other contract, subcontract or agreement, for the construction and completion of the Improvements and all contracts and agreements which have been or shall hereinafter be entered into relating to the construction, development, sale, lease, operation, or use of all or a portion of the Real Property or the Improvements, and all governmental licenses or permits obtained for the lawful construction of the Improvements.

4.1.7. Accounts. All accounts of Trustor, presently existing or hereafter arising, including all accounts as defined in the Utah Uniform Commercial Code, as amended, established in connection with or by reason of Trustor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

4.1.8. Documents. All documents of Trustor, presently existing or hereafter arising, including all documents as defined in the Utah Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Trustor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

4.1.9. Instruments. All instruments of Trustor, presently existing or hereafter arising, including all instruments as defined in the Utah Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Trustor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

4.1.10. General Intangibles. All general intangibles of Trustor, presently existing or hereafter arising, including general intangibles as defined in the Uniform Commercial Code, choses in action, proceeds, contracts, distributions, dividends, refunds, security deposits, judgments, insurance claims, any right to payment of any nature, intellectual property rights or licenses, any other rights or assets of Trustor customarily or for accounting purposes classified as general intangibles, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

4.2. Security Agreement. This Deed of Trust constitutes a Security Agreement with respect to the Personalty, and Beneficiary shall have all of the rights and remedies of a secured party under the Loan Documents and the Utah Uniform Commercial Code as well as all other rights and remedies

available at law or in equity. Trustor and Beneficiary acknowledge their mutual intent that all security interests contemplated herein are given as a contemporaneous exchange for new value to Trustor, regardless of when advances to Trustor are actually made or when the Trust Estate is acquired.

4.3. **Fixture Filing.** This Deed of Trust constitutes and is filed as a fixture filing under Section 334 of the Utah Uniform Commercial Code (Utah Code Annotated §70A-9a-334). Certain of the Property consists of goods that are or are to become fixtures upon the Real Property, and this Deed of Trust is to be recorded in the Official Records of the county in which the Real Property is located. This Deed of Trust shall remain in effect as a fixture filing until released or satisfied of record or its effectiveness otherwise terminates as to the Real Property.

ARTICLE V REMEDIES UPON DEFAULT

5.1. **Events of Default.** Any of the following shall constitute an "Event of Default": (a) any failure by Trustor to pay any monetary amount when due under the Note, the Operating Agreement, this Deed of Trust or any other Loan Document; (b) there is a default under any of the Permitted Exceptions, including the first priority Deed of Trust, if not cured within any cure period given in the Permitted Exceptions; (c) there is an Event of Default or a Termination Event as defined in the Operating Agreement or any of the other Loan Documents; (d) any failure by the Trustor to perform any obligation not involving the payment of money, or to comply with any other term or condition applicable to Trustor under this Deed of Trust or any other Loan Document, and the expiration of the shorter of the time period set forth in such Loan Document to cure such default or thirty (30) days after written notice of such failure by Beneficiary to Trustor, provided that if such failure cannot reasonably be cured within such thirty (30) day period, Trustor shall have another period of sixty (60) days in which to effect such cure provided that Trustor commences to cure the failure within the initial period of thirty (30) days, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent period of sixty (60) days; (e) the lien or security interest of this Deed of Trust shall lose validity or priority through any act or omission of Trustor; (f) a decree or order is entered for the appointment of a trustee, receiver or liquidator for Trustor or any guarantor or the Property of Trustor or any guarantor and is not dismissed within fifteen (15) days; (g) Trustor or any guarantor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due; (h) there is an attachment, execution or other judicial seizure of any property of Trustor or any guarantor and such seizure is not discharged within fifteen (15) days; (i) the issuance of any writ of attachment or execution or any similar process against the Property or any part thereof of interest therein or the entry of any judgment that shall become a lien on the Property or any part thereof or interest therein, if such execution, attachment, process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or (j) any substantial damage to or destruction of the Property if for any reason the Property cannot be (or is not) restored to its prior condition within a reasonable period of time, as determined by Beneficiary. Whenever any of the other Loan Documents refers to a "default" under this Deed of Trust, such reference shall be to an Event of Default as defined herein. Upon presentation of an affidavit by Beneficiary setting forth facts showing an Event of Default, Trustee is authorized to accept as true and conclusive all facts and statements set forth therein and to act thereon under this Deed of Trust. An Event of Default under this Deed of Trust shall be deemed a default under the other Loan Documents.

5.2. **Rights and Remedies.** At any time after the occurrence of an Event of Default, Beneficiary or Trustee may do any one or more of the following in accordance with applicable law, in any order:

5.2.1. With or without notice to Trustor, declare all indebtedness secured hereby to be immediately due and payable;

5.2.2. With or without notice, and without releasing Trustor from its obligations relative to such Event of Default, cure such Event of Default, and the costs and expenses incurred by Beneficiary or Trustee in so doing shall become a part of the indebtedness secured hereby;

5.2.3. Exercise any remedy afforded by Article III or Article IV;

5.2.4. Commence and maintain an action or actions to foreclose this Deed of Trust, to specifically enforce any rights of Beneficiary hereunder (including rights with respect to possession and sale of any additional security for the Loan), to enjoin any conduct that impairs or threatens to impair the security of this Deed of Trust, or to obtain such other equitable remedies as may be appropriate;

5.2.5. Execute a written declaration of default and demand for sale, and a written notice of default and election to cause the Property or any part thereof to be sold by exercise of Trustee's power of sale under this Deed of Trust, which notice shall be filed for record in the Official Records of the county in which the Property is located;

5.2.6. Resort to and realize upon the security for the Loan and any other security now or hereafter held by Beneficiary in such order as Trustee and Beneficiary or either of them may, in their sole discretion, determine, concurrently or successively or in one or several consolidated or independent judicial actions or non-judicial proceedings;

5.2.7. Proceed under the Utah Uniform Commercial Code 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 of real property, and treat both real and personal property interests as one parcel or package of security as permitted by Utah Code Annotated §70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing or concerning water rights (such as stock in irrigation, canal, or water companies) in accordance with Utah Code Annotated §57-1-30 or other applicable law; and/or

5.2.8. Exercise any and all other remedies at law, including any action for damages suffered by Beneficiary as a result of any Event of Default, or in equity as may be available now or hereafter, as Beneficiary may elect.

5.3. **Exercise of Trustee's Power of Sale.**

5.3.1. Should Beneficiary elect to have Trustee exercise the power of sale herein contained, Beneficiary shall deliver to Trustee a written declaration of default and demand for sale in accordance with applicable law;

5.3.2. In accordance with applicable law, Trustee shall cause to be recorded, published and/or delivered to Trustor such notice of default and election to sell as may then be required by law and by this Deed of Trust. After giving notice of default and notice of sale, and the lapse of such time period as may be required by law, Trustee may, without demand on Trustor, at the time and place of sale fixed in the notice of sale, either as a whole or in separate parcels or items or through two (2) or more successive sales, sell the Property or any part thereof at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustor shall have no right to direct the order in which the Property is sold and Trustor hereby waives any and all rights under Utah Code Annotated §57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold. Beneficiary may, in its sole discretion, designate the order in which the Property shall be offered for sale or sold and determine if the Property shall be sold in a single sale or in two (2) or more successive sales or in any other manner Beneficiary deems to be in its best interests. If Beneficiary determines that the Property shall be sold in two (2) or more sales, Beneficiary may, at its option, cause such sales to be conducted simultaneously or successively on the same day or on different days and times and in such order as Beneficiary shall determine, and no such sale shall extinguish or otherwise affect the lien of this Deed of

Trust on any part of the Property not then sold until all indebtedness secured hereby has been fully paid. Trustor shall pay the costs and expenses of each such sale and any judicial proceeding in which any such sale may be made. Trustee shall deliver to such purchaser its deed conveying the portion of 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 Beneficiary, may purchase at such sale;

5.3.3. After deducting all costs, fees and expenses of Trustee and of the sale, including costs of evidence of title in connection with the sale, Trustee shall apply the proceeds of sale first to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the default rate of interest specified in the Note (or, if no default rate is specified, at the highest rate then in effect under the Note), next to all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto or the Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Annotated §57-1-29;

For purposes of Utah Code Annotated §57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, and similar amounts, if any, owing from time to time under the Loan 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 default interest, late charges, any prepayment premium, and similar amounts owing from time to time under the Loan to the principal balance of the Loan, 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;

5.3.4. In accordance with applicable law, Trustee may postpone the sale of all or any portion of the Property by public announcement at the time and place first fixed for sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement, 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; and

5.3.5. Upon any sale pursuant to this Section, Trustor shall be completely and irrevocably divested, to the maximum extent permitted by law, of all its right, title, interest, claims and demands at law or in equity in and to the Property sold or any part thereof, and such sale shall be a perpetual bar both at law and in equity against Trustor and any and all other persons claiming any such right, title, interest, claims or demands by, through or under Trustor.

5.4. **Rescission of Notice of Default.** Beneficiary, from time to time, before any Trustee's sale, may rescind any notice of default and of election to cause the Property to be sold by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring or impair the right of Beneficiary to execute and deliver to Trustee, as provided above, other declarations of default and demand for sale, notices of default and of election to cause the Property to be sold to satisfy the obligations hereof, or otherwise affect any provision, agreement, covenant or condition of the Note or this Deed of Trust or any of the rights, obligations or remedies of the parties hereunder.

ARTICLE VI MISCELLANEOUS

6.1. **Additional Powers of Beneficiary.** Without affecting the liability of any other person liable for the payment of or performance of any indebtedness secured hereby, and without affecting the lien of this Deed of Trust, Beneficiary may, at any time, and from time to time, without notice to or consent of Trustor: (a) release any person primarily or secondarily liable for payment or performance of any indebtedness secured by this Deed of Trust; (b) extend the maturity date of such indebtedness or accept

partial payments hereon; (c) grant forbearances; (d) release or reconvey, or cause to be released or reconveyed, any or all of the Property; (e) take or release any other or additional security for any indebtedness secured hereby; and (f) consent to the transfer of any security.

6.2. Costs and Expenses; Actions by Trustee and/or Beneficiary to Preserve Property.

6.2.1. Every provision of this Deed of Trust, or any other Loan Document, that imposes upon Trustor an obligation to perform an act, or embodying an agreement by Trustor to perform an act, shall be construed as obligating Trustor to pay all costs and expenses relating thereto. All amounts disbursed by Beneficiary and Trustee pursuant to this Deed of Trust or the other Loan Documents, with interest thereon at the default rate set forth in the Promissory Note that this Deed of Trust secures from the date of disbursement until repaid, shall constitute a Secured Obligation. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the amounts set forth in the Loan Documents, or the maximum rate permitted by law. Should Trustor fail to make any payment or to do any act as herein provided, Beneficiary and/or Trustee, may, but shall not be obligated to, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, all without notice to or demand upon Trustor, without releasing Trustor from any obligation hereof or secured hereby, and within such times and in such manner as Beneficiary or Trustee may deem reasonable;

6.2.2. Without limiting any other power of Trustee or Beneficiary under this Deed of Trust, Trustor acknowledges that Beneficiary and/or Trustee shall have the right, but not the obligation, to take any action that either of them may deem necessary or appropriate for the protection of Beneficiary or the security of this Deed of Trust, including the right: (i) to enter upon and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property that they or either of them may consider necessary or proper to keep the Property in good condition or repair; (iii) to appear and participate in any action or proceeding affecting the Property; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt that in the judgment of either may affect or appear to affect the security of this Deed of Trust or be senior in priority to the lien hereof; and (v) in exercising such powers, to employ attorneys or other consultants or experts, and pay their fees and expenses. All sums advanced in taking such action, together with all other costs, fees and expenses incurred by Beneficiary or Trustee hereunder (including costs of evidence of title, court costs, appraisals, surveys and attorneys' fees), shall: (A) bear interest at the highest rate in effect under the Note (or at any higher default rate of interest specified in the Note if an Event of Default then exists) from the date advanced until paid in full, (B) be payable in full, together with interest thereon, upon demand by Beneficiary, and (C) be added to the indebtedness secured hereby. Neither the reservation nor any exercise of the foregoing rights shall be construed to excuse Trustor's failure to perform fully and when due all of Trustor's obligations under this Deed of Trust or any other Loan Document, or to prevent any such failure from constituting an Event of Default; and

6.2.3. All court costs, attorneys' fees, witness fees, appraisal fees, survey fees, title charges and other fees, charges, costs and expenses that Beneficiary may incur in taking any action pursuant to any provision of this Deed of Trust, or any other Loan Document, following any act, event or circumstance that constitutes or is reasonably likely to lead to an Event of Default shall be added to and included in the indebtedness secured hereby, shall bear interest at the default rate of interest specified in the Note (or, if no default rate is specified, at the highest rate in effect under the Note) from the date incurred until paid in full, and shall be payable in full, together with interest, upon demand by Beneficiary. Without limiting the generality of the foregoing provisions, such fees, charges, costs and expense shall include (i) all attorneys' fees and other costs and expenses of any nature incurred by Beneficiary in connection with the collection of the indebtedness secured by this Deed of Trust or the enforcement of Beneficiary's rights and remedies under the Loan Documents, including attorneys' fees incurred by Beneficiary for legal advice concerning Beneficiary's rights and remedies following any act, event or occurrence that constitutes or is likely to lead to an Event of Default (whether or not such Event of Default in fact occurs and whether or not any remedies are in fact exercised); (ii) attorneys' fees, as determined by

the court, and all other costs, expenses and fees incurred by Beneficiary in connection with any suit or proceeding instituted to collect the indebtedness secured by this Deed of Trust or to enforce Beneficiary's rights and remedies under the Loan Documents, whether or not such suit or proceeding is prosecuted to judgment or conclusion; and (iii) all attorneys' fees and other costs and expenses incurred by Beneficiary in connection with any bankruptcy, insolvency or reorganization proceeding or receivership involving Trustor or any affiliate of Trustor, including all attorneys' fees incurred in making any appearances in any such proceeding or in seeking relief from any stay or injunction issued in or arising out of any such proceeding. Such fees, charges, costs and expenses shall be considered collateral advances made to protect Beneficiary's security and shall be added to the indebtedness secured hereby as provided above, and shall not be considered costs and expenses of foreclosure or be subject to any statutory or other limitation on the amount thereof that may be demanded or recovered by Beneficiary, unless the fees, charges, costs and expenses in question are incurred solely and specifically for services that are (A) performed only after the date of Beneficiary's written election to declare the entire indebtedness secured hereby immediately due and payable and (B) directly related to the preparation or giving of any notice of default or notice of sale or the taking of any other action required by law in connection with a trustee's sale or judicial foreclosure proceeding under this Deed of Trust.

6.3. Nonliability of Beneficiary.

6.3.1. Beneficiary neither undertakes nor assumes any responsibility or duty to Trustor or any third party to select, review, inspect, examine, supervise, pass judgment upon or inform Trustor or any third party of the quality, adequacy or suitability of: (i) any plans and specifications for the construction or alteration of improvements on the Property; (ii) architects, contractors, subcontractors or materialmen employed or utilized in such construction or alteration; (iii) the presence of any Hazardous Materials on the Property; (iv) any appraisal of the Property; (v) the progress or course of construction or its conformance or non-conformance with plans and specifications or any amendments, alterations or changes thereto; (vi) any Environmental Report; or (vii) any other matter or item that Beneficiary has the right to review, inspect, examine or approve under this Deed of Trust or any other Loan Document. Any such selection, review, inspection, examination and the like is solely for the purpose of (a) determining whether or not Trustor's obligations under the Loan Documents are being properly discharged and (b) protecting Beneficiary's security and preserving Beneficiary's rights under the Loan Documents, and such selection, review, inspection, examination and the like shall not render Beneficiary liable to Trustor or any third party for the sufficiency, accuracy, completeness, or legality thereof and shall not operate to waive any rights of Beneficiary hereunder;

6.3.2. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Beneficiary pursuant hereto, including any financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation to anyone with respect thereto by Beneficiary;

6.3.3. Prior to Beneficiary's actual entry upon and taking possession of the Property, nothing in this Deed of Trust shall operate to impose upon Beneficiary any responsibility for the operation, control, care, management or repair of the Property, and the execution of this Deed of Trust by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Trustor prior to Beneficiary's actual entry and taking possession;

6.3.4. Beneficiary is hereby authorized to disclose (i) information relating to Hazardous Materials to federal, state, or local authorities when Beneficiary reasonably believes such disclosure to be required under any Environmental Law; and (ii) information concerning Trustor, the Property or the indebtedness secured hereby to any insurance agency or company, to any person or entity proposing to acquire an interest in the Loan; and

6.3.5. Beneficiary shall not be liable, and is hereby released from liability, for any act or omission of Trustee, except for such actions as may be taken by Trustee at the express request of and in accordance with instructions given by Beneficiary.

6.4. **No Merger.** If Trustor's and Beneficiary's estates hereunder shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger, and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary hereunder.

6.5. **Partial Release and Reconveyance of Real Property.** In the event Trustor desires to convey a portion of the Real Property, which shall be pursuant to an arms' length transaction, Trustor shall notify Beneficiary and provide Beneficiary with a description of the parcel proposed to be conveyed (the "Released Parcel"), along with the proposed purchase price and a copy of the purchase agreement. The proposed transaction shall be subject to Beneficiary's prior approval, which approval shall not be unreasonably withheld, conditioned, or delayed, so long as the terms of the Loan Documents are met. No partial release and reconveyance shall be permitted except as to Released Parcels that are wholly included in subdivision plats duly approved by Draper City and recorded with Salt Lake County at Trustor's sole cost and expense. If the Released Parcel is not an existing legally subdivided parcel, Trustor shall provide Beneficiary with a copy of the proposed subdivision plat or diagram showing the proposed lot. Any remaining portion of the Real Property secured by this Deed of Trust must have adequate, legal and unrestricted access to public dedicated streets and public utility services and be of a size and dimension that preserves its marketability. For each release of a Released Parcel, Trustor shall pay to the Trustee of the Deed of Trust the amount described on Schedule One (the "Release Price") for the Released Parcel. The "net proceeds" shall mean the total gross sale price less: (a) reasonable market third-party broker's commissions payable in relation to the sale, (b) the premium for the owners title insurance policy, (c) escrow fees, (d) the costs associated with the subdivision of the parcel, if applicable, (e) reasonable legal fees, and (f) other reasonable and customary closing costs (excluding costs associated with the ownership and operation of the Real Property, such as utilities and taxes). Trustor shall provide Beneficiary with a schedule determining the net proceeds of the sale of the parcel for Beneficiary's review and approval. Prior payments of principal or interest payable under the Note (including, without limitation, prior principal prepayments) shall not be applied toward the Release Price. Upon the approval of the Release Price and net proceeds by Beneficiary, Beneficiary will provide Trustee with a Request for Partial Reconveyance authorizing the Trustee to release the Released Parcel from this Deed of Trust. The Partial Reconveyance shall not be recorded until Trustee's receipt, or assurance of payment, of the Release Price and net proceeds. Upon receipt of the Release Price, Beneficiary will apply the Release Price amount owned under the Note, as described in this Deed of Trust, including Section 3.5.

6.6. **Full Reconveyance by Trustee.** Upon written request of Beneficiary and upon payment by Trustor of Trustee's fees for all services involved in the preparation, execution and recordation of the reconveyance, Trustee shall reconvey the Property or portions thereof then held hereunder, in whole or in part, as designated by Beneficiary and in such portions as designated by Beneficiary to Trustor, to the person or persons legally entitled thereto, without recourse or warranty. Beneficiary is not obligated to request partial reconveyances except as otherwise expressly agreed in writing by Beneficiary.

6.7. **Substitution of Trustee.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county in which the Property is located and by otherwise complying with the provisions of the laws of Utah, substitute a successor or successors to the Trustee named herein or acting hereunder. Without conveyance of the Property, a successor Trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law.

6.8. **Defense of Trustee; Reimbursement.** Trustor shall defend Trustee against, and reimburse Trustee for, any and all losses, claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees) that Trustee may incur, suffer, or sustain in the execution of the trust created

hereunder, or in the performance of any act required or permitted hereunder or by law or in equity, or otherwise arising out of or in connection with this Deed of Trust.

6.9. **Certain Waivers.** All sums payable by Trustor hereunder shall be paid without notice, demand, or defense, without right of counterclaim, setoff, or deduction, and without abatement, suspension, deferment, diminution or reduction, all of which rights now or hereafter conferred by law are hereby waived by Trustor. Without limiting the generality of the foregoing, Trustor also waives, to the fullest extent permitted by law: (a) any right to require Beneficiary or Trustee, prior to or as a condition to the enforcement of this Deed of Trust, to marshal assets or otherwise to proceed against or exhaust any other security for the obligations secured hereby or pursue any other remedy whatsoever; and (b) any defense arising by reason of (i) any disability or other defense of Trustor with respect to the obligations secured hereby, (ii) the unenforceability or invalidity of any security for the indebtedness secured hereby or the lack of perfection or failure of priority of any security for the indebtedness secured hereby, (iii) the cessation from any cause whatsoever of the personal liability of Trustor (other than by reason of the full payment and discharge of all indebtedness secured hereby), or (iv) any act or omission of Trustee, Beneficiary or others that directly or indirectly results in or aids in the discharge or release of Trustor or the indebtedness secured hereby or any other security therefor by operation of law or otherwise.

6.10. **Cumulative Rights and Remedies; No Waiver.** The rights, powers and remedies given to Beneficiary pursuant to this Deed of Trust shall be in addition to, and shall not supersede or preempt, any rights, powers and remedies given to Beneficiary by virtue of any applicable Law. Every power or remedy given by this Deed of Trust to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised concurrently, independently, or successively, in any order whatsoever, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies. No forbearance, failure or delay by Beneficiary in exercising any right, power or remedy granted to Beneficiary hereunder shall be deemed a waiver of such right, power or remedy, nor shall any such forbearance, failure or delay preclude the further exercise of such right, power or remedy, or any other right, power or remedy; and every such right, power and remedy of Beneficiary shall continue in full force and effect until such right, power or remedy is explicitly waived by Beneficiary in writing. The consent or approval by Beneficiary to or of any act by Trustor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

6.11. **Notices.** Any notice which a party is required or may desire to give to another party shall be in writing and may be sent by personal delivery, by mail (either [i] by United States certified mail, return receipt requested, postage prepaid, or [ii] by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery or by telecopy (with a copy by mail), addressed as follows (subject to the right of a party to designate a different address for itself by notice similarly given):

To Trustee:

Kirton McConkie
50 East South Temple Street
Salt Lake City, Utah 84111
Attention: Loyal C. Hulme

To Beneficiary:

Cambia Capital Partners, LLC
6875 South 900 East, Suite 100
Salt Lake City, Utah 84047
Attention: Michael Christensen

With Copy To:

Kirton McConkie
50 East South Temple Street
Salt Lake City, Utah 84111
Attention: Loyal C. Hulme

To Trustor:

Lake City Capital XII, LLC
7370 S. Creek Road, Suite 204
Sandy, UT 84093
Attn: Dave Brown

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given.

6.12. **Modification.** This Deed of Trust may be modified, supplemented or amended only by an instrument in writing signed by Trustor and Beneficiary.

6.13. **Time of the Essence.** Time is of the essence in the performance of each provision of this Deed of Trust.

6.14. **Governing Law.** This Deed of Trust shall be governed by and construed and enforced under the laws of the United States and the regulations, rules, orders, requirements and policies of any federal departments, offices, bureaus, boards and other agencies, instrumentalities and authorities that have jurisdiction over Beneficiary or the Loan to the extent that Beneficiary or the Loan is subject to or governed by such federal laws, regulations, rules, orders, requirements and policies. Except as provided in the preceding sentence, this Deed of Trust shall be governed by and construed and enforced under the laws of the State of Utah without regard to conflict of law principles. Any reference in this Deed of Trust to any particular section or provision of the Utah Code Annotated shall also include and refer to any amendment, modification, replacement or succeeding section or provision or such referenced section or provision.

6.15. **Successor Trustee.** Beneficiary may appoint a successor Trustee at any time by filing for record in the office of the County Recorder of the county wherein the Real Property is located, a substitution of Trustee. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

6.16. **Severability.** In the event that any provision of this Deed of Trust is declared void, invalid or unenforceable by a regulatory agency, tribunal or court of competent jurisdiction, the remainder of this Deed of Trust shall continue in full force and effect as if the offending provision were not contained herein, and the offending provision shall be replaced by a mutually acceptable and valid provision which comes closest to the intention of the parties underlying the offending provision, and if that is not possible the offending provision shall be severed from the rest of the Deed of Trust and the validity, legality and enforceability of the remaining provisions of this Deed of Trust shall not in any way be affected or impaired thereby and shall remain in full force and effect.

6.17. **Attorneys' Fees.** In the event of a violation of any of the terms and conditions of this Deed of Trust or any of the other Loan Documents, Trustor shall reimburse Beneficiary for any and all legal fees and costs incurred by Beneficiary to enforce the terms and conditions of this Deed of Trust or

any other Loan Documents, including the costs of foreclosure, the exercise of the power of sale of the Real Property, for any other action, which amount shall be payable regardless of whether or not an action is filed or prosecuted to judgment.

6.18. **Release.** In recognition of Beneficiary's right to have all its attorneys' fees and expenses incurred in connection with this Deed of Trust secured by the Property, notwithstanding payment in full of the obligations secured by the Property, Beneficiary shall not be required to release, reconvey, or terminate any security interest or lien in or on the Property unless and until Trustor and all guarantors have executed and delivered to Beneficiary general releases in form and substance satisfactory to Beneficiary.

6.19. **Limitation on Damages.** Beneficiary and its officers, directors, managers, members, shareholders, partners, employees, representatives, agents, and attorneys, shall not be liable to Trustor or any guarantor for consequential, special, punitive, speculative, or other non-compensatory damages arising from or relating to any breach of contract, tort, or other wrong in connection with or relating to this Deed of Trust, the loan or financing transaction, or the Property regardless of whether Beneficiary may have been advised of the possibility of such damages.

6.20. **Preferential Transfers.** If the incurring of any debt by Trustor or the payment of any money or transfer of property to Beneficiary by or on behalf of Trustor or any Guarantor should for any reason subsequently be determined to be "voidable" or "avoidable" in whole or in part within the meaning of any state or federal law (collectively "voidable transfers"), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Beneficiary is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Beneficiary's counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys' fees of Beneficiary related thereto, the liability of Trustor and Guarantor, and each of them, and this Deed of Trust, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.


6.21. **Survival.** All agreements, representations, warranties and covenants made by Trustor shall survive (i) the execution and delivery of this Deed of Trust, (ii) the filing and consummation of any bankruptcy proceedings, and (iii) continue in effect so long as any obligation to Beneficiary contemplated by this Trust Deed is outstanding and unpaid, notwithstanding any termination of this Deed of Trust. All agreements, representations, warranties and covenants in this Deed of Trust shall run with the land, shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

6.22. **Interpretation of Deed of Trust.** The captions or headings at the beginning of articles, sections and paragraphs in this Deed of Trust are for convenience of reference only and shall not be used to interpret any provision hereof. All references and cross-references in this Deed of Trust to sections, exhibits, schedules and riders, unless specified otherwise, refer to provisions in, or exhibits, schedules or riders to, this Deed of Trust. Each exhibit, schedule and rider attached to this Deed of Trust is incorporated herein by reference. In the event of any inconsistency or conflict between the terms of this Deed of Trust and the Note, the terms of the Note shall prevail. As used in this Deed of Trust, the term "dollars" and the symbol "\$" mean dollars in lawful currency of the United States of America. The use in this Deed of Trust of the word "include," "includes" or "including" shall be construed as if followed by "without limitation" and shall not limit the generality of any provision in which it is used.

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

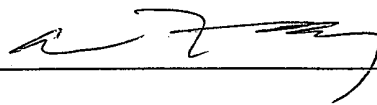
TRUSTOR:

Lake City Capital XII, LLC,
a Utah limited liability company

By:  _____

Name (Print): Dave Brown

Title: Manager

By:  _____

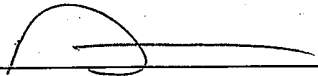
Name (Print): Dan Newell

Title: Manager

GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO CAMBIA AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY." NO FORMAL ACCEPTANCE BY CAMBIA IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE.

THIS GUARANTY IS DATED 11/25/15, 2015.

GUARANTOR:



SS#/Tax ID #: 529732789

NOTARIAL ACKNOWLEDGMENT

STATE OF Utah)
COUNTY OF Salt Lake)

On 11/25/15, before me, Crystal Keele, a Notary Public, personally appeared Dave Brown, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity as Manager of Lake City Capital XII, LLC.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Allen (Seal)

STATE OF Utah)
COUNTY OF Salt Lake)

On 11/25/15, before me, Crystal Keele, a Notary Public, personally appeared Dan Newell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity as Manager of Lake City Capital XII, LLC.

I certify under PENALTY OF PERJURY under the laws of the State of Utah that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Allen (Seal)

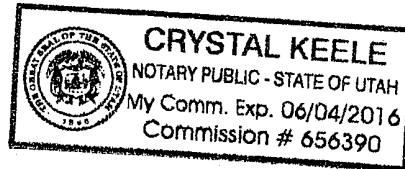


EXHIBIT A

DESCRIPTION OF THE REAL PROPERTY

PARCEL 1:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 18, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH 89 DEGREES 51'23" EAST 1023.00 FEET ALONG THE NORTH SECTION LINE OF SAID SECTION; THENCE SOUTH 45 DEGREES 06'23" WEST 1453.039 FEET TO THE WEST SECTION LINE OF SAID SECTION; THENCE NORTH 00 DEGREES 21'24" EAST 1023.00 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM, THE FOLLOWING DESCRIBED PROPERTY:

LOTS 1 THROUGH 28, INCLUSIVE, DEARBOURNE HEIGHTS P.U.D., PHASE 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE. TOGETHER WITH A RIGHT OF USE AND EASEMENT IN AND TO THE PRIVATE ROADS AND COMMON AREAS CONTAINED IN SAID DEARBOURNE HEIGHTS P.U.D., PHASE 1, WHICH IS APPURTENANT TO SAID LOTS 1 THROUGH 6 AND 23 THROUGH 28.

PARCEL 1A:

A NON-EXCLUSIVE PERPETUAL EASEMENT ON, OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED PROPERTY, AS SET FORTH IN THAT CERTAIN ACCESS AND UTILITIES EASEMENT BY AND BETWEEN METROPOLITAN WATER DISTRICT OF SALT LAKE AND SANDY, AS GRANTOR, AND DH-DRAPER, LLC, AS GRANTEE, RECORDED DECEMBER 03, 2002, AS ENTRY NO. 8444036, IN BOOK 8696, AT PAGE 3077, OF OFFICIAL RECORDS.

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 12, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 00 DEGREES 21'24" WEST, 350.00 FEET ALONG THE SECTION LINE; THENCE NORTH 89 DEGREES 38'36" WEST, 15.00 FEET; THENCE NORTH 00 DEGREES 21'24" EAST 300.00 FEET; THENCE NORTH 12 DEGREES 03'03" WEST, 51.20 FEET; THENCE NORTH 00 DEGREES 27'52" EAST, 480.51 FEET TO THE NORTHERN PROPERTY LINE OF THE PARCEL OWNED BY THE METROPOLITAN WATER DISTRICT; THENCE NORTH 70 DEGREES 18'40" EAST 27.70 FEET ALONG SAID NORTHERN PROPERTY LINE TO A POINT ON THE EAST SECTION LINE OF SECTION 12; TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 00 DEGREES 27'52" WEST 490.00 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.

PARCEL 1B:

A NON-EXCLUSIVE TEMPORARY EASEMENT ON, OVER, ACROSS AND THROUGH THE FOLLOWING DESCRIBED PROPERTY, AS SET FORTH IN THAT CERTAIN ACCESS AND UTILITIES EASEMENT (TEMPORARY) BY AND BETWEEN SORENSON ASSOCIATES, LLC AND ALLIANCE CAPITAL DEVELOPMENT, LLC, AS GRANTOR, AND DH-DRAPER, LLC, AS GRANTEE, RECORDED DECEMBER 3, 2002, AS ENTRY NO. 8444037, IN BOOK 8696, AT PAGE 301, OF OFFICIAL RECORDS, AMENDED BY AMENDMENT TO ACCESS AND UTILITY EASEMENT RECORDED OCTOBER 3, 2003, AS ENTRY NO. 8842800, IN BOOK 8923, AT PAGE 5881, OF OFFICIAL RECORDS, AND AFFIDAVIT OF CORRECTION RECORDED DECEMBER 15, 2003, AS ENTRY NO. 8924169, IN BOOK 8923, AT PAGE 5880, OF OFFICIAL RECORDS.

BEGINNING AT THE NORTHWEST CORNER OF LOT 3, AS SHOWN ON THE SUBDIVISION PLAT ENTITLED "SOUTH POINTE COMMERCE CENTER SUBDIVISION," BOOK 2003P, AT PAGE 6 IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, TOWNSHIP 4 SOUTH, RANGE 1 EAST; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID SUBDIVISION NORTH 60 DEGREES 19'24" EAST 855.68 FEET TO A POINT ON A NON-TANGENT 75.00 FOOT RADIUS CURVE TO THE RIGHT, SAID POINT ALSO BEING ON THE RIGHT OF WAY OF 65 EAST (RADIUS BEARS NORTH 28 DEGREES 45'41" EAST); THENCE ALONG SAID CURVE AND CONTINUING ALONG SAID RIGHT OF WAY 125.11 FEET, THROUGH A CENTRAL ANGLE OF 95 DEGREES 34'29"; THENCE NORTH 65 DEGREES 33'29" WEST, 11.00 FEET TO A POINT ON A NON-TANGENT 61.00 FOOT RADIUS CURVE TO THE RIGHT (RADIUS BEARS NORTH 65 DEGREES 33'29" WEST); THENCE ALONG SAID CURVE 48.17 FEET, THROUGH A CENTRAL ANGLE 45 DEGREES 14'41" THENCE SOUTH 69 DEGREES 41'12" WEST 50.17 FEET TO A POINT ON A 287.50 FOOT RADIUS CURVE TO THE LEFT (RADIUS BEARS SOUTH 20 DEGREES 18'48" EAST); THENCE ALONG SAID CURVE 147.28 FEET, THROUGH A CENTRAL ANGLE OF 26 DEGREES 21'05"; THENCE SOUTH 40 DEGREES 20'07" WEST 61.57 FEET TO A POINT ON A 202.50 FOOT RADIUS CURVE TO THE RIGHT (RADIUS BEARS NORTH 49 DEGREES 39'53" WEST); THENCE ALONG SAID CURVE 70.64 FEET, THROUGH A CENTRAL ANGLE OF 19 DEGREES 59'18"; THENCE SOUTH 60 DEGREES 19'24" WEST 613.46 FEET; THENCE SOUTH 29 DEGREES 40'36" EAST 48.55 FEET; THENCE NORTH 70 DEGREES 30'59" EAST 121.20 FEET TO THE POINT OF BEGINNING.

PARCEL 1C:

TOGETHER WITH A NONEXCLUSIVE EASEMENT AND RIGHT OF WAY OVER ANN ARBOR, LANSING WAY AND DEARBORNE VIEW DRIVE FOR INGRESS, EGRESS AND OTHER UTILITIES AS DISCLOSED BY THAT CERTAIN AGREEMENT RECORDED JANUARY 8, 2013, AS ENTRY NO. 11551694 IN BOOK 10095 AT PAGE 7163 OF OFFICIAL RECORDS.

Tax Parcel No. 34-18-101-029BIT B

PERMITTED EXCEPTIONS

1. Trust Deed in favor of Academy Construction Lending, LLC, recorded on January 14, 2015

SCHEDULE ONE

RELEASE PRICE

Release price for each Released Parcel shall be paid as a Major Capital Event in the manner provided in Section 8.2 of the Operating Agreement of Trustor.