



W2717292




E# 2717292 PG 1 OF 28
Leann H. Kilts, WEBER COUNTY RECORDER
08-Jan-15 0445 PM FEE \$65.00 DEP SC
REC FOR: FIRST AMERICAN TITLE - NCS
ELECTRONICALLY RECORDED

RECORDING REQUESTED BY:
BANK OF THE WEST,
a California banking corporation

AND WHEN RECORDED MAIL TO:

BANK OF THE WEST
Attn: Darya Generalova
CBG Loan Middle Office REID
2527 Camino Ramon
Mail Stop: NC-B07-3E-I
San Ramon, California 94583
Loan No. 1060186901

APN: 01-021-0056 

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

THIS DEED OF TRUST SECURES A NOTE WHICH PROVIDES FOR A VARIABLE INTEREST RATE

THIS AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of the 24th day of December, 2014 by ANDROMEDA HOSPITALITY GROUP, INC., a Colorado corporation, as "Trustor", in favor of BANK OF THE WEST, a California banking corporation, as "Trustee", for the benefit of BANK OF THE WEST, a California banking corporation, as "Beneficiary."

RECITALS:

A. Trustor is the owner of certain real property and improvements thereon commonly known as 2401 Washington Boulevard, Ogden, Weber County, Utah 84401, as more particularly described on Exhibit A attached hereto (the "Property"). The Property tax identification number is 01-021-0056.

B. Trustor granted Beneficiary a security interest in the Property by that certain Deed of Trust dated October 14, 2010, recorded in the real property records of Weber County, Utah, on October 25, 2010, at entry number 2498325 (as amended, the "Original Deed of Trust").



C. Trustor granted Beneficiary a security interest in all rents from the Property by that certain Assignment of Rents dated October 14, 2010, recorded in the real property records of Weber County, Utah, on October 25, 2010 at entry number 2498326 (as amended, the "Assignment of Rents").

D. Trustor also granted Beneficiary a security interest in the Collateral (as defined therein) by that certain Commercial Security Agreement dated October 14, 2010 (as amended, the "Security Agreement").

E. The Original Deed of Trust secures Trustor's obligations to Beneficiary arising from the loan made to Trustor, pursuant to that certain Business Loan Agreement dated as of October 14, 2010, as amended, which is evidenced by that certain Promissory Note dated October 14, 2010, as amended, in the original principal amount of Three Million Nine Hundred Forty Thousand and No/100ths Dollars (\$3,940,000.00) executed by Trustor to the order or in favor of Beneficiary.

F. Trustor and Beneficiary desire to amend and restate the Original Deed of Trust.

G. Upon Trustor's execution and delivery of this Deed of Trust, the Assignment of Rents and the Security Agreement shall be terminated and shall no longer be of any force or effect.

AGREEMENT:

NOW THEREFORE, to carry out the desire of the parties hereto, in consideration of the premises and other valuable consideration, receipt of which is hereby acknowledged, it is hereby understood and agreed that the Original Deed of Trust shall be, and same hereby is, amended and restated as follows:

1. GRANT IN TRUST.

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations (as defined in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, its successors and assigns, IN TRUST, WITH POWER OF SALE TOGETHER WITH THE RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, all present and future rights, titles, interests, estates, powers and privileges that Trustor now has or may hereafter acquire in or to the following property and any interest therein (collectively, the "Subject Property"):

(a) The real property located in the County of Weber, State of Utah, more particularly described in EXHIBIT A attached hereto (the "Property"), subject to all matters set forth in that certain ALTA Loan Policy of Title Insurance issued by First American Title Insurance Company, Effective Date October 25, 2010, Policy No. 457343-LP. The address of the Property is 2401 Washington Boulevard, Ogden, Utah 84401. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Property as described on EXHIBIT A.



(b) All buildings and other improvements and structures now or hereafter located on the Property (collectively, the **"Improvements"**);

(c) All existing and future leases, subleases, subtenancies, licenses, agreements and concessions relating to the use, occupancy or enjoyment of all or any part of the Property, together with any and all guaranties and other agreements relating to or made in connection with any of the foregoing (individually, a **"Lease"**, and collectively, the **"Leases"**);

(d) All rents, issues, income, revenues, royalties, profits, proceeds and earnings now or hereafter payable with respect to or otherwise derived from the ownership, use, management, operation, leasing or occupancy of the Property and the Improvements, including, without limitation, letters of credit, lease bonds, cash, security deposits or other security substitutes, credit enhancements and other like items under or with respect to any of the Leases (collectively, **"Rents"**);

(e) All tenements, hereditaments, appurtenances, privileges, choses in action, options to purchase all or any part of the Property or Improvements or any interest therein (and any greater estate in the Property or Improvements now owned or hereafter acquired by Trustor pursuant thereto), and other rights and interests now or in the future benefiting or otherwise relating to the Property or the Improvements, including, without limitation, streets, roads, easements, rights-of-way, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property, development rights or credits, oil, gas, other mineral rights and other hydrocarbon substances in, on or under the Property and all royalty, leasehold and other rights of Trustor pertaining thereto;

(f) All and singular air rights, passages, waters, water rights (whether tributary or non-tributary or not non-tributary), water courses, wells, well permits, water stock, ditch rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the real property, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license, and the reversion and reversions and remainder and remainders thereof;

(g) All policies of insurance (whether or not such policies are required to be maintained under the terms of the Insurance Agreement (as defined in the Loan Agreement)) and all claims, demands or proceeds relating to such insurance which Trustor now has or may hereafter acquire with respect to the Property or the Improvements situated thereon, including all advance payments of insurance premiums made by Trustor with respect thereto, and all interest which may accrue on any of the foregoing;

(h) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral and all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral, and all interest which may accrue on any of the foregoing;



(i) All existing and future inventory, furnishings, fixtures, equipment, supplies, construction materials, goods and other tangible personal property, which are now or hereafter owned or acquired by Trustor or in which Trustor now or at any time has rights, wherever located or used or usable in connection with the Property, and whether located at, placed upon or about, or affixed or attached to or installed in or on the Property or the Improvements or any part thereof, or located elsewhere in the possession of Trustor or any warehouseman, bailee, contractor, supplier or any other person, used or to be used in connection with or otherwise relating to the Property or the Improvements or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy thereof, and all accessories, attachments, parts, or repairs of or to any of such property, including but not limited to all appliances, furniture and furnishings, findings, materials, supplies, equipment and fixtures, and all building material, supplies, and equipment now or hereafter delivered to the Property and installed or used or intended to be installed or used therein whether stored on the Property or elsewhere; and all renewals or replacements thereof or articles in substitution thereof;

(j) All (i) accounts, chattel paper, deposit accounts, money, documents and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of any kind relating to or otherwise arising in connection with or derived from the Property, the Improvements or any other part of the Subject Property, (ii) refunds, rebates, reserves, deferred payments, deposits, cost savings, letters of credit, and payments of any kind due from or payable by (A) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a "**Governmental Agency**"), or (B) any insurance or utility company, in either case relating to any or all of the Subject Property, (iii) refunds, rebates and payments of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-governmental charges or levies imposed upon Trustor with respect to or upon any or all of the Subject Property, (iv) guarantees of any of the foregoing and any security therefor, (v) cash funds and cash collateral accounts maintained pursuant to any of the loan documents secured by or referred to in this Deed of Trust, and (vi) proceeds and claims arising on account of any damages to or taking of the Property or any part thereof, and all causes of action and revenues for any loss or diminution in the value of the Property or Improvements;

(k) All general intangibles relating to or arising out of the ownership, design, development, operation, management and use of the Property and construction of the Improvements, including, but not limited to, (i) all names under which or by which the Property or the Improvements may at any time be operated or known, all rights to carry on business under any such names or any variants thereof, and all goodwill in any way relating to the Property, (ii) all permits, licenses, authorizations, variances, land use entitlements, approvals and consents issued or obtained in connection with the construction of the Improvements, (iii) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the use, occupancy or operation of the Property, (iv) all rights as a declarant (or its equivalent) under any covenants, conditions and restrictions or other matters of record affecting the Property, provided, however, that Beneficiary shall have no liability under such declarant's rights unless and until Beneficiary forecloses on the Property, (v) all materials prepared for filing or filed with any governmental agency, (vi) all rights under any contract in



connection with the development, design, use, operation, management and construction of the Property, (vii) all books and records prepared and kept in connection with the acquisition, construction, operation and occupancy of the Property and the Improvements, and (viii) all royalties, fees and goodwill associated with any of the foregoing (subject in all cases to any franchise or license agreements relating thereto);

(l) Whether or not included in Section 1(f), all water stock, shares of stock or other evidence of ownership of any part of the Property or the Improvements that is owned by the Trustor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property or Improvements, and all documents of membership in any membership facility developed on the Property;

(m) All surety, bonding, security, construction, architectural, engineering, development, financing, guaranty, indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts and subcontracts, all insurance policies, and all licenses and bonds, in any way pertaining to the development, construction, use, operation and maintenance of the Property and Improvements and any business of Trustor therein conducted, and all guarantees of any of the foregoing and any security therefor;

(n) All sales agreements, escrow agreements, deposit receipts and other documents and agreements for the sale or other disposition of all or any part of the real or personal property described herein, and deposits, proceeds and benefits arising from the sale or other disposition of all or any part of such real or personal property;

(o) All engineering and architectural drawings, plans, specifications, soils tests and reports, feasibility studies, appraisals, engineering reports, manuals, computer software, studies, data and drawings pertaining to any or all of the property described in Section 1(a) through (n), and all contracts and agreements relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings;

(p) All ledger sheets, files, records, documents and instruments (including, but not limited to, computer programs, tapes, and related electronic data processing software) evidencing an interest in or relating to the foregoing collateral in Sections 1(a) through (o), or in this Section 1(p); and

(q) All additions and accretions to, substitutions and replacements for, and proceeds and products of, any of the foregoing. The listing of specific rights or property shall not be interpreted as a limit of general terms.

2. SECURED OBLIGATIONS. Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1 above FOR THE PURPOSE OF SECURING the following obligations (collectively, the "**Secured Obligations**") in such order of priority as Beneficiary may elect:



(a) Payment of all sums at any time owing and the performance of all other obligations arising under that certain Amended and Restated Promissory Note Secured by Deed of Trust in the maximum principal amount of Three Million Six Hundred Thousand and No/100 Dollars (\$3,600,000.00) dated as of the date hereof executed by Trustor to the order the Beneficiary (the "Note"), which Note has a maturity date of January 5, 2022;

(b) Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Trustor contained herein, in that certain Amended and Restated Term Loan Agreement dated as of the date hereof and executed by Trustor and Beneficiary (the "Loan Agreement") and in any other instrument or document heretofore or hereafter executed by Trustor having reference to or arising out of the indebtedness evidenced by the Note which recites that the obligations thereunder are secured hereby;

(c) Performance of all future advances and other obligations that Trustor may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(d) Payment and performance of all covenants and obligations of Trustor under any Hedge Agreement (as defined in the Loan Agreement), which agreement is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partially; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, for purposes of UCA Section 57-1-28, without limitation, all interest and charges, prepayment charges (if any), late charges, extension fees, renewal fees and loan fees at any time accruing or assessed on any of the Secured Obligations, and Trustor may add all late charges, extension fees, renewal fees and loan fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that the rate of interest on one or more Secured Obligations may vary from time to time.

This Deed of Trust secures future advances up to a total maximum amount of \$5,400,000.00.



3. RIGHTS AND DUTIES OF THE PARTIES.

3.1 Title. Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Deed of Trust is a first and prior lien on the Subject Property.

3.2 Performance of Obligations. Trustor shall promptly pay and perform the Secured Obligations when due.

3.3 Maintenance, Repair and Alterations. Except as expressly provided in the Loan Agreement and the Insurance Agreement, Trustor shall (a) keep the Subject Property in good condition and repair; (b) not remove, demolish or substantially alter any of the Subject Property or Collateral or any part without the prior written consent of Beneficiary; (c) complete or restore promptly and in good and workmanlike manner any Improvements which may be constructed, damaged or destroyed on the Property without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 3.5; (d) comply with all laws, ordinances, regulations, covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which now or hereafter affect the Subject Property or any part thereof or requiring any alterations, improvements or alterations to be made thereon (including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements); (e) not commit or permit any waste of the Subject Property; and (f) do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.

3.4 Defense and Notice of Losses, Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action in excess of \$50,000.00. Beneficiary shall have the right, but not the obligation, to participate in any such proceedings, to control same and to be represented therein by counsel of its choice at Trustor's expense, and Trustor shall deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation.

3.5 Maintenance of Insurance; Damages; Application of Insurance Proceeds.

(a) Maintenance of Insurance. Trustor shall comply with its obligations under the Insurance Agreement.

(b) Payment of Proceeds. Subject to applicable law, and without regard to any requirement contained in Section 3.3, Trustor shall pay to Beneficiary, promptly upon Trustor's receipt of same, any proceeds received by Trustor under any such insurance policy on account of any damage or destruction to the Improvements. Beneficiary shall have the right to



join Trustor in adjusting any loss covered by any such insurance, and Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's sole option and in Beneficiary's sole discretion as attorney-in-fact for Trustor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection thereof. If Beneficiary elects not to exercise such right, Beneficiary shall be under no obligation to question the amount of any compensation, award, recovery, settlement, proceeds, damages, claims, rights of action or payments received under any policy of insurance on account of any damage or destruction to the Improvements, and may accept the same in the amount paid.

(c) Application of Insurance Proceeds. In the event of any damage to or destruction of the Improvements, Beneficiary shall have the option, in its sole discretion, to: (i) apply, in the event Beneficiary determines that the security for the repayment of the Secured Obligations has been impaired on account of such damage or destruction, all or any part of such proceeds to the Secured Obligations in such order as Beneficiary may determine, whether or not such indebtedness is then due, (ii) release all or any part of such proceeds to Trustor, or (iii) hold the balance of such proceeds to be used to reimburse Trustor for the cost of reconstruction of the Improvements. In the event Beneficiary elects to so hold such proceeds, the Improvements shall be promptly and diligently restored by Trustor to the equivalent of their condition immediately prior to such damage, destruction or casualty or to such other condition as Beneficiary may approve in writing, and the disbursement of such insurance proceeds shall be in accordance with disbursement procedures acceptable to Beneficiary. Beneficiary may condition such application upon reasonable conditions, including, without limitation: (A) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (B) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (it being agreed that Beneficiary's standard procedures for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (C) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (D) the delivery to Beneficiary of evidence acceptable to Beneficiary (1) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (2) of the continuation of Leases acceptable to and required by Beneficiary; (3) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (4) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (5) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within sixty (60) days of receipt by Beneficiary of such proceeds, then Beneficiary may, for itself and the other Banks, apply such proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose. If Beneficiary elects to apply the proceeds to the payment of the sums secured hereby in accordance with the provisions hereof, and after doing so Beneficiary



determines that the remaining security is inadequate to secure the remaining indebtedness, Trustor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the remaining indebtedness to a balance for which adequate security is present. For purposes of this section, it shall be reasonable for Beneficiary to deem its security impaired if the loan to value ratio originally approved by Beneficiary for the Loan is exceeded by the ratio of the maximum principal balance to the reduced value of the Property. Any such application of proceeds shall not cure or waive any Event of Default or notice of any Event of Default hereunder or invalidate any act done pursuant to such notice. The terms of this Section 3.5 concerning the adjustment of losses and the collection, control and application of proceeds shall apply to any insurance proceeds, inclusive of earthquake insurance, whether or not Beneficiary has required Trustor to procure or maintain such insurance.

3.6 Condemnation. All compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action and payments to which Trustor may become entitled to on account of such proceedings shall be paid to Beneficiary. Any sums so collected by Beneficiary shall first be applied to reimburse Trustee and Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such sums, and the balance shall be applied, in the event Beneficiary determines that the security for the repayment of the Secured Obligations has been impaired on account of such condemnation, to any Secured Obligations, in such order as Beneficiary may determine, whether or not any of such Secured Obligations are then due, except that if Beneficiary's security interest is not materially impaired as a result thereof, as determined by Beneficiary in its discretion, Beneficiary shall hold such proceeds to be applied to the restoration of the Subject Property in the same manner and pursuant to the same procedures, standards, and elections on the part of Beneficiary as are provided in Section 3.5(b) with respect to insurance proceeds. Any surplus remaining after payment and satisfaction of the Secured Obligations shall be paid to Trustor as its interest may then appear. If Beneficiary elects to apply the condemnation proceeds to the payment of the Secured Obligations, and after doing so Beneficiary determines that the remaining security is inadequate to secure the remaining Secured Obligations, Trustor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the Secured Obligations to a balance for which adequate security is present. For purposes of this section, it shall be reasonable for Beneficiary to deem its security impaired if the loan to value ratio originally approved by Beneficiary for the Loan is exceeded by the ratio of the maximum principal balance of the Loan to the reduced value of the Property and Improvements. Any such application of proceeds shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall be under no obligation to question the amount of any compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action or payments received in any such condemnation proceeding, and may accept the same in the amount paid.

3.7 Taxes. Trustor shall pay prior to delinquency, all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured



Obligation. Upon Beneficiary's request, Trustor shall deliver to Beneficiary official receipts of the appropriate taxing authority (or other proof satisfactory to Beneficiary) evidencing the payment thereof. Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any taxes or assessments by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such taxes and assessments at the time and in the manner provided in this Section 3.7, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to a tax or assessment, and unless, in Beneficiary's absolute and sole discretion, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Subject Property or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary, or (iii) Trustor shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

3.8 Impounds. At any time following the occurrence of an Event of Default, at Beneficiary's option, Beneficiary may require Trustor to establish and maintain an impound account with Beneficiary, into which Trustor monthly shall deposit an amount established by Beneficiary as Beneficiary's estimate of one-twelfth (1/12th) of the annual amount of all taxes, assessments, encumbrances, charges and liens coming due during each calendar year and premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents (as defined in the Loan Agreement) when same are next due, such sums to be applied by Beneficiary to payment of these amounts when due, to be replenished by Trustor at any time upon ten (10) days' notice if Beneficiary reasonably determines the amount it holds to be insufficient to pay the foregoing obligations as they become due. Beneficiary, except as otherwise required by applicable law, shall (i) not be required to pay interest on any funds held hereunder, (ii) be authorized to assign any funds held by it to any successor holder of the Beneficiary's interest in this Deed of Trust and thereupon be relieved of any further obligation for the application or refund of such sums, and (iii) at any time, at its option, following default, apply funds held hereunder to the Secured Obligations. Beneficiary shall, unless an Event of Default has occurred and is continuing under this Deed of Trust or under any other Loan Document, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon the occurrence of an Event of Default, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Event of Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of an Event of Default not cured by such application. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

3.9 Liens. Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Subject to the provisions of the



Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto. Trustor shall have the right to contest in good faith the validity of any involuntary lien or encumbrance, provided Trustor shall first deposit with Beneficiary or court of competent jurisdiction a bond or other security satisfactory to Beneficiary in such amount as Beneficiary or such court shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such lien or encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any lien or encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien or encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any lien or encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the default rate of interest provided under the Note. Such costs and expenses shall be secured by this Deed of Trust.

3.10 Further Assurances. Trustor will, at the request of Beneficiary, execute, deliver and furnish such documents or take such further action as Beneficiary may deem reasonably necessary or desirable to evidence Trustor's obligations under the Secured Obligations, perfect the security therefor, or otherwise carry out the terms of this Deed of Trust and any of the other documents delivered to Beneficiary in connection herewith.

3.11 Due on Sale or Encumbrance. Except as expressly provided in the Loan Agreement or herein, Trustor shall not, directly or indirectly, sell, convey, transfer, dispose of, grant a lien or security interest in, assign, further encumber, mortgage, hypothecate, transfer, alienate or otherwise dispose of the Subject Property or any part thereof or any interest therein, including, without limitation, air rights or development rights, whether voluntarily, involuntarily, by operation of law or otherwise, or lease all or any portion thereof or an undivided interest therein, or enter into an agreement so to do, without the prior written consent of Beneficiary. If Trustor at any time without Beneficiary's express prior written consent shall do, suffer or permit the occurrence of a transaction otherwise prohibited under this Section 3.11, then the Note and all sums secured hereby shall be immediately due and payable without claim, notice or demand. Any consent by Beneficiary permitting a transaction otherwise prohibited under this Section 3.11 shall not constitute a consent to or waiver of any right of Beneficiary to withhold its consent on any subsequent occasion to a transaction not otherwise permitted by the provisions hereof.

3.12 Security Interests. Except as otherwise expressly permitted in the Loan Agreement, all equipment, personal property, fixtures and other property subject to the lien of the security interest granted to Beneficiary in this Deed of Trust shall be fully paid for by



Trustor, and shall be subject to no security interest, lien or other encumbrance, other than that granted to Beneficiary.

3.13 Releases, Extensions, Modifications and Additional Security. Without affecting the liability of obligations of any person, including Trustor, for the performance of any obligations secured hereby (excepting only any person or property otherwise expressly released in writing by Beneficiary) releasing or impairing the priority of the lien of and security interests created by this Deed of Trust upon the Subject Property and Collateral, Beneficiary may, from time to time and without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations, release any person or entity liable for payment of any of said indebtedness or the performance of any of said obligations, take any action or make any agreement to extend the time of payment, increase the amount of any Secured Obligation or otherwise alter the terms of any of said obligations, accept additional security therefor of any kind, including trust deeds or mortgages, or alter, substitute or release all or a portion of any property securing said obligations.

3.14 Release. Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall release, in the manner permitted by applicable law, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the release may describe the grantee as "the person or persons legally entitled thereto" and the recitals of any matters or facts in any release executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any release. When the Subject Property has been fully released, the last such release shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.

3.15 Subrogation. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Deed of Trust.

3.16 Right of Inspection. Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time upon at least two (2) days advance notice (which notice shall not be required upon an Event of Default) for the purpose of inspecting the Subject Property and Collateral and ascertaining Trustor's compliance with the terms hereof.

3.17 Compensation; Exculpation; Indemnification.

(a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal



of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or Collateral or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after an Event of Default or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Subject Property after an Event of Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) TRUSTOR INDEMNIFIES BENEFICIARY AGAINST, AND HOLDS BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH BENEFICIARY MAY SUFFER OR INCUR: (i) BY REASON OF THIS DEED OF TRUST; (ii) BY REASON OF THE EXECUTION OF THIS DEED OF TRUST OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE SUBJECT PROPERTY, EXCEPT FOR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY. THE ABOVE OBLIGATION OF TRUSTOR TO INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE OR PARTIAL RELEASE OF THIS DEED OF TRUST.

(c) Trustor shall pay all amounts and indebtedness arising under this Section 3.17 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Loan as specified in the Loan Agreement.

3.18 Water Rights.

(a) Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 2.1(t), the term "**Governmental Authorities**" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Weber, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Deed of Trust.



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

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

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

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

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

4. ASSIGNMENT OF LEASES AND RENTS.

4.1 Assignment. Trustor hereby irrevocably absolutely and unconditionally assigns and transfers to Beneficiary, all of Trustor's right, title and interest in and to all Leases and



Rents. The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present, absolute and unconditional assignment and not an assignment for security only, and Beneficiary's right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Property.

4.2 License. Beneficiary confers upon Trustor a license (the "License") to collect, receive, use and enjoy all Rents as trustee for the benefit of Beneficiary and to apply the amounts so collected first to the payment of the Secured Obligations that are then due and payable and then to the payment of all other sums due and payable hereunder, and thereafter, so long as no Event of Default has occurred, the balance may be distributed to Trustor. Upon the occurrence of an Event of Default, the License granted hereby shall cease and the license shall be revoked automatically and, pursuant to Section 6.2(b), Beneficiary, for shall have the sole right, with or without taking possession of the Property, to collect all Rents. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

4.3 Effect of Assignment. The foregoing irrevocable and absolute assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary, or any of its employees, agents, contractors or subcontractors, any of the rights remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

4.4 Representations and Warranties. Trustor represents and warrants that: (a) it has provided to Beneficiary a true, correct and complete list of all Leases, (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms subject to applicable laws affecting creditors' rights and principles of equity, (c) no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of Trustor or, to the best of Trustor's knowledge, any other party; (d) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (e) none of the lessor's interests under any of the Leases has been transferred or assigned.



4.5 Beneficiary's Right to Proceeds. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee), modification or amendment of any Lease shall be paid over to Beneficiary and applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

4.6 Utah Uniform Assignment of Rents Act. This Article 4 is subject to the Utah Uniform Assignment of Rents Act, UCA Section 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Article 4 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

5. SECURITY AGREEMENT AND FIXTURE FILING.

5.1 Security Interest. This Deed of Trust shall constitute a security agreement as that term is used in the Uniform Commercial Code of Utah (the "UCC") and Trustor hereby grants and assigns to Beneficiary, as additional collateral for the Secured Obligations, a security interest in all of the property described in Section 1 which may be personal property (collectively, the "Collateral").

5.2 Representations and Warranties. Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) Trustor's principal place of business is located at the address shown on the signature page hereto; and (d) Trustor's legal name is exactly as set forth on the first page of this Deed of Trust and all of Trustor's organizational documents or agreements delivered to Beneficiary are complete and accurate in every respect.

5.3 Covenants. Trustor agrees: (a) to execute and deliver such documents as Beneficiary deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Beneficiary prior written notice thereof; (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Beneficiary is authorized to file financing statements in the name of Trustor to perfect Beneficiary's security interest in Collateral.

5.4 Rights of Beneficiary. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any



property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §9-620, or other applicable law.

5.5 Rights of Beneficiary upon Event of Default. Upon the occurrence of an Event of Default, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law, and to the extent permitted by applicable laws:

(a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and

(b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell, lease, license or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral; and

(c) In disposing of Collateral hereunder, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Beneficiary to the payment of expenses incurred by Beneficiary in connection with the foregoing, including attorneys' fees, and the balance of such proceeds may be applied by Beneficiary toward the payment of the Secured Obligations in such order of application as Beneficiary may from time to time elect.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §9-620, or other applicable law. Trustor agrees that Beneficiary shall have no obligation to process or prepare any Collateral for sale or other disposition.

5.6 Power of Attorney. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon an Event of Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary



as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

5.7 Possession and Use of Collateral. Except as otherwise provided in this Section or the other Loan Documents, so long as no Event of Default exists, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

5.8 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to Section 9-502(c) of the UCC, as amended or recodified from time to time, covering any portion of the Subject Property which now is or later may become a fixture attached to the Property or any Improvement. This Deed of Trust is acknowledged and agreed to be a "construction mortgage" under the UCC § 9-334.

6. EVENTS OF DEFAULT AND REMEDIES.

6.1 Events of Default. Any of the following events shall, at Beneficiary's option, constitute an event of default (an "Event of Default") hereunder:

(a) Failure to Pay. The failure of Trustor to pay any installment of principal, interest or other amounts under the Loan Documents any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or as part of a prepayment or otherwise, if such failure continues beyond ten (10) days after written notice from Beneficiary;

(b) Failure to Perform Deed of Trust. The failure of Trustor to keep, observe and perform any non-monetary obligation under this Deed of Trust, and the continuation of such failure for a period of thirty (30) days after written notice from Beneficiary or within any longer grace period, if any, allowed in the Loan Documents for such failure, except that if such breach is not (A) a violation of any requirement or restriction of Sections 3.1 (Title), 3.5 (Insurance), 3.6 (Condemnation), 3.7 (Taxes), 3.11 (Due on Sale or Encumbrance), and (B) reasonably capable of being cured within such thirty (30) day period, then such thirty (30) day cure period shall be further extended as necessary to complete the cure (but in no event more than an additional sixty (60) days in the aggregate) so long as Trustor commences the cure within the original thirty (30) day period and thereafter diligently pursues such cure to completion;

(c) Other Event of Defaults. The occurrence of any Event of Default (as defined in the Loan Agreement) under the Loan Agreement or any other instrument or agreement secured hereby.

6.2 Remedies. Upon the occurrence of any Event of Default, Trustee and Beneficiary shall each have all the following rights and remedies to the extent permitted by applicable laws:

(a) Acceleration of Indebtedness. Declare all Secured Obligations, and the same shall thereupon become, immediately due and payable without any presentment, demand, protest or notice of any kind.



(b) Termination of License. Terminate Trustor's right and license to collect the Rents, and either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Subject Property or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Subject Property, or any part thereof or interest therein, make, modify, enforce, cancel or accept the surrender of any Lease, increase the income therefrom or protect the security hereof and, with or without taking possession of the Subject Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, to the Secured Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Subject Property, the collection of such Rents and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Subject Property or the collection, receipt and application of Rents, Trustee and Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale. Failure of Beneficiary at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement of Beneficiary of the right to collect the same.

(c) Cure Breaches. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Event of Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.

(d) Entry. To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof.

(e) Appointment of Receiver. As a matter of strict right and without notice to Trustor or anyone claiming under Trustor, and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable or the filing of a notice of default, to apply to any court having jurisdiction to appoint a receiver or receivers of the Subject Property, and Trustor



hereby unconditionally and irrevocably consents to such appointment and waives notice of any application therefor.

(f) Judicial Foreclosure of Deed of Trust. Commence and maintain any action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage, to specifically enforce any of the covenants hereof, or otherwise to enforce the same. Trustor agrees that the covenants of Trustor shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought by Beneficiary under this purpose, Trustor waives the defense of laches and any applicable statute of limitations.

(g) Power of Sale. Deliver to Trustee a written declaration of default and demand for sale ("**Default Notice**"), and a written notice of default and election to cause Trustor's interest in the Subject Property or any portion thereof to be sold ("**Notice of Sale**"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Subject Property is located. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Default Notice and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Default Notice and Notice of Sale as required by law, sell the Subject Property at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. To the fullest extent permitted by applicable law, Trustor hereby expressly waives any right which it may have to direct the order in which any of the Subject Property may be sold when it consists of more than one lot or parcel, and such order of sale, whether in a single sale or in multiple sales held on different days or at different times, shall be at the sole discretion of Beneficiary. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to such purchaser or purchasers thereof the statutorily required deed conveying the property so sold. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary may purchase at such sale.

(h) Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with UCA Section 57-1-32 or other applicable law.

(i) Multiple Foreclosures. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine their sole discretion.



(j) Waiver of Marshaling; Multiple Security. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation ("**Other Property**") marshaled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

(k) Credit Bid. Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following to the fullest extent permitted by applicable law: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

(l) Other Remedies. Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law.

6.3 Remedies Not Exclusive. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy



given by any of the Loan Documents to Trustee or Beneficiary, or to which either of them may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary.

6.4 Application of Foreclosure Sale Proceeds. After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest on the Loan specified in the Loan Agreement to be applicable on or after maturity or acceleration of the Loan; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.5 Application of Other Sums. All sums received by Beneficiary under Section 4.2 or any Section of this Article 6, less all costs and expenses incurred by Beneficiary or any receiver under any such section, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.

6.6 No Cure or Waiver. Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other rights or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Event of Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.

6.7 Payment of Costs, Expenses and Attorneys' Fees. Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Loan as specified in the Loan Agreement. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.

6.8 Power to File Notices and Cure Defaults. Trustor hereby irrevocably appoints Beneficiary, and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the



issuance of a deed pursuant to the foreclosure of the lien of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases, Rents and other proceeds of the Subject Property in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute an Event of Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act (whether or not such failure constitutes negligence) by Beneficiary under this Section.

6.9 Rescission of Notice. Beneficiary, from time to time before completion of a sale, may rescind any notice of breach or default and of election to cause the Subject 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 above provided, other declarations of default and demand for sale, and notices of breach or default, and of election to cause the Subject Property to be sold to satisfy the obligation hereof, nor otherwise affect any provision, agreement, covenant or condition of the Loan Documents or this Deed of Trust, or any of the rights, obligations or remedies of the parties hereunder or thereunder.

7. INTENTIONALLY OMITTED

8. MISCELLANEOUS

8.1 Additional Provisions. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference. PURSUANT TO UCA SECTION 25-5-4, TRUSTOR HEREIN IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

8.2 Governing Law. This Deed of Trust shall be construed in accordance with the laws of the State of Utah without regard to its conflicts of laws principles, except to the extent that federal laws preempt the laws of the State of Utah.



8.3 Severability. In the event any one or more of the provisions contained in this Deed of Trust, in the Note or in any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

8.4 Amendment. This Deed of Trust cannot be modified, waived, discharged or terminated orally, but only by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

8.5 Waiver of Remedies. By accepting payment of any of the Secured Obligations after its due date, or an amount which is less than the amount then due, or the performance of any obligation required hereunder after the date required for such performance, Beneficiary shall not waive its rights either to require prompt payment or performance when due of all other Secured Obligations, or to declare a default as herein provided for the failure to so pay or perform.

8.6 No Implied Waiver. No waiver by Beneficiary of any default or breach by Trustor hereunder shall be implied from any omission by Beneficiary to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default identified in the waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. 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. No delay or omission of Trustee or Beneficiary in the exercising of any right or remedy available upon an Event of Default shall impair such right or remedy or any other right or remedy nor shall the same be construed to be a waiver of any Event of Default or any acquiescence therein, and no custom or practice which may develop between Trustor and Beneficiary during the term hereof shall be deemed a waiver of or any way affect the right of Beneficiary to insist upon the performance by Trustor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

8.7 Notices: All notices, demands or other communication required or allowed to be given hereunder to either party shall be given in writing (at the address set forth below their respective signatures below) by any of the following means: (a) personal service; (b) facsimile, (c) expedited prepaid delivery service, either commercial or United States postal Service, with proof of attempted delivery; or (d) registered or certified, first class mail, postage prepaid, return receipt requested. Any such communication, notice or demand shall be deemed to have been given: (i) in the case of personal delivery, at the time of delivery; (ii) in the case of facsimile, upon sender's receipt of a machine-generated confirmation of successful transmission (iii) in the case of expedited prepaid delivery and facsimile, upon the first attempted delivery on a Business Day; and (iv) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day. It is understood and agreed that each of the parties will use reasonable efforts to send copies of any notices marked "With a copy to"; provided, however, that failure to deliver such copy or copies shall have no consequences whatsoever to the



effectiveness of any notice made to the other party. Any party hereto may change its address for notices and other communications hereunder by notice to the other parties hereto.

8.8 Successors and Assigns. This Deed of Trust, together with the covenants and warranties herein contained, shall inure to the benefit of Beneficiary, to any lender participating in the Note, and to any subsequent holder of the Note and each of their respective successors and assigns, and shall be binding upon Trustor, its heirs, personal representatives, successors and assigns; provided, however, that this Section 8.8 does not waive or modify the provisions of Section 3.11.

8.9 Interpretation. In this Deed of Trust, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. The word "include(s)" means "include(s) without limitation," and the word "including" means "including, but not limited to." The term "Subject Property" and "Collateral" means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively. No listing of specific instances, items or matters shall in any way limit the scope or generality of any language in this Deed of Trust.

8.10 Joint and Several Liability. If more than one person has executed this Deed of Trust as "Trustor", all obligations of each Trustor hereunder shall be joint and several.

8.11 Headings. Headings are for convenience only and are not intended as a limitation on the content of the paragraph following or as an aid to the construction thereof.

8.12 Waiver. To the fullest extent permitted by law, Trustor waives (a) the pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust, (b) any right to offset any obligations owing by Beneficiary to Trustor or any Trustor funds held by Beneficiary against any obligation or payment due by Trustor or other person obligated to Beneficiary, and (c) to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under UCA Sections 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

8.13 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Subject Property unless Beneficiary consents to such merger in writing.

8.14 Request for Notice. Trustor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth below or at such other address as Trustor may designate pursuant to Section 8.7. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address given below is the address for Beneficiary as secured party under the UCC.

8.15 Recourse to Separate Property. Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured



by this Deed of Trust may be collected by execution upon that person's separate property, and any community property of which that person is a manager.

8.16 WAIVER OF JURY TRIAL: TO THE MAXIMUM EXTENT PERMITTED BY LAW, TRUSTOR AND BENEFICIARY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. TRUSTOR AND BENEFICIARY AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS.

8.17 Exhibits. EXHIBIT A attached hereto is expressly incorporated herein by this reference as though fully set forth herein.

8.18 Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

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EXHIBIT A

DESCRIPTION OF PROPERTY

THIS EXHIBIT A IS ATTACHED TO THAT CERTAIN AMENDED AND RESTATED DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED DECEMBER 24, 2014 EXECUTED BY ANDROMEDA HOSPITALITY GROUP, INC., A COLORADO CORPORATION, AS TRUSTOR.

Real property in the City of Ogden, County of Weber, State of Utah, described as follows:

PARCEL1:

PART OF LOT 7, BLOCK 25, PLAT "A", OF OGDEN CITY SURVEY: BEGINNING AT THE NORTHEAST CORNER OF LOT 7, AND RUNNING THENCE SOUTH 101 FEET; THENCE WEST 122 FEET; THENCE NORTH 101 FEET; THENCE EAST 122 FEET TO THE PLACE OF BEGINNING.

PARCEL2:

A NON-EXCLUSIVE RIGHT OF WAY IN COMMON WITH OTHERS OVER THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT 101 FEET SOUTH AND 122 FEET WEST FROM THE NORTHEAST CORNER OF SAID LOT 7, AND RUNNING THENCE WEST 43 FEET; THENCE NORTH 12 FEET; THENCE EAST 43 FEET; THENCE SOUTH 12 FEET TO BEGINNING.

Said property is also known by the street address of:

385 24th Street

Commonly known as 2401 Washington Ave.

Ogden, UT 84401

