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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84111  
Telephone: (801) 532-1234  
Attn: Jason S. Nichols

06-368-0408

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**") is made as of June 4, 2021, by PARRISH CROSSING, LLC, a Utah limited liability company, whose address is 1216 W. Legacy Crossing Blvd., Suite 300, Centerville, Utah 84014 (the "**Trustor**"); Jason S. Nichols, Attn: Parsons Behle & Latimer, 201 South Main Street, Suite 1800, Salt Lake City, Utah 84111 ("**Trustee**"); and TRANSPORTATION ALLIANCE BANK INC. DBA TAB BANK with a mailing address of 4185 South Harrison Boulevard, Suite 200, Ogden, Utah 84403 ("**Beneficiary**").

**I. Grant in Trust and Secured Obligations.**

1.1 **Grant in Trust.** For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the following property (together all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Property**"):

(a) the real property located in the County of Davis, State of Utah, as described in Exhibit A attached hereto (the "**Parcel**") together with all existing and future easements and rights affording access to the Parcel (collectively, the "**Land**"), which is located within an incorporated city or village as of the date hereof; together with

(b) all buildings, structures and improvements now located or later to be constructed on the Land (the "**Improvements**"); together with

(c) all existing and future appurtenances, privileges, easements, franchises and tenements of the Land, including any and all development rights and credits, air rights, water, wells, pipes, pumps, works, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(d) all leasehold estates, leases, ground leases, subleases, licenses, concessionaire agreements, bailments or other agreements affecting the use, enjoyment or

occupancy of the Property or any portion thereof now or hereafter existing or entered into (including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "**Bankruptcy Code**") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or occupant of any portion of the Property (individually a "**Tenant**" and collectively, the "**Tenants**") by Trustor as landlord of the Property and all extensions, amendments and modifications thereto heretofore or hereafter entered into (individually a "**Lease**" and collectively, the "**Leases**"), and all right, title and interest of Trustor thereunder, including all guaranties thereof; together with

(e) all appurtenances and other property and interests of any kind or character, whether described in this Deed of Trust or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements; together with

(f) all fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures, and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(g) all rentals, earnings, income, receipts, royalties, revenues, issues and profits including all prepaid rents and security deposits (some or all together, as the context may require, "**Rents**") which, after the date hereof, and while Secured Obligations (defined below) remain unpaid, may accrue from the Land and/or Improvements or any part of the foregoing, subject, however, to the right, power and authority conferred upon Trustor to collect and apply such proceeds set forth herein; together with

(h) all "goods" (as defined in the Uniform Commercial Code - - Secured Transactions of the State of Utah or any successor or similar statute (the "**UCC**")); together with

(i) all general intangibles arising from or relating to the Land, Improvements and items (c), (d) and (e) above; together with

(j) all rights of Trustor under any policy or policies of hazard or liability insurance relating to any of the Property and any and all riders, amendments, extensions, renewals, supplements, or extensions thereof, and all proceeds, loss payments, and premium refunds which may become payable with respect to such insurance policies; together with

(k) all construction, service, engineering, consulting, architectural, and other similar contracts of any nature as such may be modified, amended, or supplemented from time to time, concerning the design, construction, management, operation, occupancy, use, and/or disposition of any or all of the Land, Improvements or any part of the foregoing; together with

(l) all building materials, equipment, work in process or other personal property of any kind, whether stored on or about the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land and/or Improvements; together with

(m) all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and/or Improvements generally; together with

(n) all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(o) all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

(p) all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms that are used but not otherwise defined herein shall have the meanings given them in the Promissory Note and Loan Agreement (as both terms are defined below).

1.2 **Secured Obligations.** Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1.1 and grants the security interest set forth in Article III for the purpose of securing the following obligations in any order of priority that Beneficiary may choose (some or all together, as the context may require, the "**Secured Obligations**"; any one singly, a "**Secured Obligation**");

(a) payment and performance of all obligations of Trustor owed to Beneficiary at any time under that certain Promissory Note (Term Loan) dated as of even date herewith by and among Trustor, as maker, in favor of Beneficiary (the "**Promissory Note**") in the original principal amount of **SEVEN MILLION SIX HUNDRED THOUSAND DOLLARS (US \$7,600,000)**;

(b) payment and performance of all obligations owing under that certain Loan Agreement of even date herewith by and between Trustor and Beneficiary (the "**Loan Agreement**");

(c) payment and performance of all obligations owing under this Deed of Trust;

(d) payment and performance of all future advances and other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust;

(e) payment and performance of every obligation of Trustor or any successor in ownership of all or part of the Property contained in any agreement, document, or instrument now or hereafter executed by Trustor, any borrower or any successor in ownership of all or part of the Property reciting that the obligations thereunder are secured by this Deed of Trust; and

(f) payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. These terms include any provisions in the Promissory Note, Loan Agreement or the other Loan Documents that permit borrowing and repayment, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## **II. Assignment of Leases and Rents.**

### **2.1 Assignment.**

(a) Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary all Rents, whether now due, past due or to become due. This is an absolute assignment, not an assignment for security only. Trustor hereby absolutely and unconditionally assigns to Beneficiary, as part of the consideration for the transactions contemplated by this Deed of Trust and the other Loan Documents, the Rents and Leases and other documents or instruments evidencing the Rents now or hereafter in effect and any and all deposits or letters of credit held as security under the Leases, it being intended by Trustor and Beneficiary that such assignment constitutes an absolute and present assignment and not an assignment for additional security only. Nothing contained in the foregoing sentence shall be construed to bind Beneficiary to the performance of any of the covenants, conditions or provisions contained in any such Lease or other document or otherwise to impose any obligation on Beneficiary (including any liability under the covenant of quiet enjoyment contained in any Lease), except that Beneficiary shall be accountable for any money or security actually received pursuant to such assignment. Such assignment and grant shall continue in effect until the Secured Obligations have been indefeasibly paid in full. The execution of this Deed of Trust shall constitute and evidence the irrevocable consent of Trustor to the entry upon and taking possession of the Property by Beneficiary and the exercise by Beneficiary of the rights and powers granted pursuant hereto,

including, without limitation, those set forth below, regardless of whether foreclosure has been instituted and without applying for a receiver. Such assignment shall include, without limitation:

(i) the immediate and continuing right to receive and collect all amounts payable by all Tenants, including without limitation (i) all Rents, (ii) all damages or other amounts payable in the event of any expiration or termination of any Lease pursuant to the terms thereof, by operation of Applicable Law or otherwise, (iii) any indemnification against, or reimbursement for, sums paid and costs and expenses incurred by Trustor under any Lease or otherwise, (iv) any award in the event of the bankruptcy of any Tenant or guarantor of a Lease, and (v) all security deposits, other security instruments, other deposits or prepayments with respect to any such Leases;

(ii) all claims, rights, powers, privileges and remedies of Trustor, whether provided for in any Lease or arising by statute or at law or in equity or otherwise, consequent on any failure on the part of any Tenant to perform or comply with any term of any Lease;

(iii) all right to take all action upon the happening of a default under any Lease as shall be permitted by any Lease or by Applicable Law, including, without limitation, the commencement, conduct and consummation of proceedings at law or in equity;

(iv) the full power and authority, in the name of Trustor, or otherwise, to enforce, collect, receive and make receipt for any and all of the foregoing and to do any and all other acts and things whatsoever which Trustor, or any landlord is or may be entitled to do under any Lease;

(v) the full power and authority, in the name of Trustor, or otherwise, to enforce any Lease; including the right to settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or other obligations under the Leases;

(vi) the full power and authority, in the name of Trustor, or otherwise, to notify any Person that the Leases have been assigned to Beneficiary and that all Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Property;

(vii) the full power and authority, in the name of Trustor, or otherwise, to lease the Property; and

(viii) the right to apply the Rents to the payment of the Secured Obligations in accordance with the Loan Agreement.

(b) During the term hereof, all rights, powers and privileges of Beneficiary herein set forth are coupled with an interest and are irrevocable, subject to the terms and conditions hereof, and Trustor will not take any action under any Lease or otherwise which is inconsistent with this Deed of Trust or any of the terms hereof or thereof and any such action inconsistent herewith or therewith shall, to the fullest extent permitted by Applicable Law, be void. Any further assignment of any rents, issues, or profits from the Property shall, to the fullest

extent permitted by Applicable Law, be void. To the fullest extent permitted by Applicable Law, Trustor hereby waives any requirement that Beneficiary commence any foreclosure proceeding with respect to any or all of the Property prior to enforcement of any remedies pursuant to this Article 2, including the right to commence and prosecute an action to appoint a receiver for Rents and all other amounts due under any Leases. Trustor will, from time to time, upon request of Beneficiary, execute all instruments and further assurances and all supplemental instruments and take all such action as Beneficiary from time to time may reasonably request in order to perfect, preserve and protect the interests intended to be assigned to Beneficiary hereby.

(c) In addition to its obligations concerning Leases set forth in the Loan Agreement, Trustor hereby agrees that it will not, unilaterally or by agreement, (a) subordinate, amend, modify, extend, discharge, terminate, surrender, waive or otherwise change any term of any Lease in any manner which would violate this Deed of Trust, the Loan Agreement or the other Loan Documents or (b) except for security deposits, accept a prepayment of Rent in excess of Rent for one month. Trustor will perform all covenants of the lessor under any such Lease or occupancy agreements. If any Lease shall be amended as permitted hereby, such Lease shall continue to be subject to the provisions hereof without the necessity of any further act by any of the parties hereto, subject to the provisions of any non-disturbance agreement which Beneficiary may have granted in accordance with the provisions of this Deed of Trust.

**2.2 Grant of License.** Until the occurrence of an Event of Default, Beneficiary waives its rights under Section 2.1(a) and Section 2.1(b) above, and grants Trustor a license to collect the Rents and enforce the rights and powers enumerated in clauses (i) through (viii) of Section 2.1(a)(i) through (viii). Such license to collect and receive the Rents and enforce such rights and powers shall be automatically revoked and the rights of Trustor thereunder shall automatically cease and terminate while any Event of Default exists. In such event, (a) Trustor hereby authorizes Beneficiary to receive and collect the Rents due under the terms of each Lease and to direct any Tenant, by written notice from Beneficiary or otherwise, to forward such Rents by mail or in person to Beneficiary and (b) Trustor shall immediately pay to Beneficiary any Rents held by or under the control of Trustor. Trustor hereby irrevocably appoints and constitutes Beneficiary as Trustor's lawful attorney-in-fact, coupled with an interest and with full power of substitution, for the purpose of taking any of the actions described in the immediately preceding sentence and all acts incidental thereto. Following the revocation of the license herein granted, Beneficiary may retain and apply the Rents toward payment of the Secured Obligations in such order, priority and proportions as Beneficiary, in its sole discretion, shall deem proper, or to the operation, maintenance and repair of the Property, and irrespective of whether Beneficiary shall have commenced a foreclosure of this Deed of Trust or shall have applied or arranged for the appointment of a receiver with respect thereto.

**2.3 Beneficiary Not Responsible.** None of the enforcement of any of the remedies under this Deed of Trust or any other remedies afforded to Beneficiary and/or the Lenders under the Loan Documents, at law or in equity, shall cause Beneficiary or any Lender to be deemed or construed to be a mortgagee-in-possession of the Property, to obligate Beneficiary or any Lender to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Notwithstanding anything to the contrary contained in this Deed of Trust, Beneficiary shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or by

reason of this Deed of Trust and Trustor shall, and hereby agrees at its sole cost and expense, protect, defend, indemnify and hold Beneficiary harmless for, from and against, and shall be responsible for any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Deed of Trust and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Beneficiary by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except to the extent such claims or demands result from the gross negligence or willful misconduct of Beneficiary or any Lender (but in no event shall Trustor's indemnification obligations be reduced with respect to Beneficiary or any Lender who has not been grossly negligent or whose conduct has not been willful).

2.4 **Direction to Tenants.** Trustor hereby irrevocably authorizes and directs each Tenant of the Property, upon receipt of notice from Beneficiary of an Event of Default, to pay all Rents due or to become due under its Lease directly to Beneficiary or to any appointed receiver of the Property. Each such Tenant shall have the right to rely upon any such notice of Beneficiary directing the payment of all Rents to Beneficiary, without any obligation to inquire as to the actual existence of the Event of Default, notwithstanding any claim of Trustor to the contrary and Trustor shall have no rights or claims against any Tenant for any Rents so paid to Beneficiary. Trustor shall facilitate, in all reasonable ways, the collection of the Rents by Beneficiary and will, upon request by Beneficiary, execute a written notice to each Tenant directing the Tenant to pay the Rents payable under such Tenant's respective Lease to Beneficiary. Each Tenant is hereby expressly authorized and directed, upon demand by Beneficiary and without the necessity of any further consent by, or notice from, Trustor, to attorn to Beneficiary as the owner of the Leases and to pay any and all Rents due to Trustor pursuant to such Tenant's Lease directly to Beneficiary or to any appointed receiver, and to observe and perform such Tenant's obligations under the Tenant's Lease to or for Beneficiary and to accept performance of the landlord's obligations under the Lease from Beneficiary. Each Tenant is hereby expressly relieved of any and all duty, liability or obligation to Trustor in respect of all payments so made. The payment of Rents to Beneficiary pursuant to Beneficiary's demand and the performance of obligations under any Lease to or for the benefit of Beneficiary shall not cause Beneficiary to assume or be bound by any of the provisions of any such Lease and shall not relieve Trustor of its obligations thereunder.

### **III. Grant of Security Interest.**

3.1 **Grant Security Agreement.** Trustor grants to Beneficiary a security interest in, and pledges and assigns to Beneficiary, all of Trustor's right, title and interest now or hereafter acquired in and to all of the following described personal property (collectively, the "Personalty"):

(a) All tangible personal property of every kind and description, whether stored on the Land or elsewhere, including, without limitation, all goods, materials, supplies, tools, books, records, chattels, furniture, fixtures, equipment, and machinery, and which in all cases is (i) used or useful or acquired in connection with any construction undertaken on the Land or the maintenance of the Land and the Improvements, or (ii) affixed or installed, or to be affixed or installed, in any manner on the Land or the Improvements;

(b) All architectural and engineering plans, specifications and drawings, and as-built drawings which arise from or relate to the Land or the Improvements;

(c) All general intangibles and rights relating to the Property, including, without limitation, all permits, licenses and claims to or demands for the voluntary or involuntary conversion of any of the Land, Improvements, or other Property into cash or liquidated claims, proceeds of all present and future fire, hazard or casualty insurance policies, whether or not such policies are required by Beneficiary, and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any breach of warranty, misrepresentation, damage or injury to, or defect in, the Land, Improvements, or other Property or any part of them;

(d) All substitutions, replacements, additions, accessions and proceeds for or to any of the foregoing, and all books, records and files relating to any of the foregoing, including, without limitation, computer readable memory and data and any computer software or hardware reasonably necessary to access and process such memory and data.

3.2 **Financing Statement.** Trustor hereby authorizes the filing or recording of financing statements, and such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property or Rents. Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute any financing statements or other documents required to be executed by Trustor for the perfection or continuation of any security interest within five (5) business days after Beneficiary's written demand, Trustor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

#### IV. **Fixture Filing.**

This Deed of Trust constitutes a financing statement filed as a fixture filing under the UCC, as amended or recodified from time to time, covering any Property which is now or later may become fixtures attached to the Land or Improvements. The exact names of Borrower, as "Debtor," and Lender, as "Secured Party," and their respective addresses are set forth on page 1 of this Deed of Trust. Borrower has an interest of record in the Property. The organizational number of the Borrower is 10501861-0160.

#### V. **Duties of the Trustor.**

5.1 **Representations and Warranties Regarding Property.** Trustor represents and warrants that:

(a) Except for the permitted encumbrances as set forth on Exhibit B (the "**Permitted Encumbrances**"), Trustor lawfully holds good and marketable fee simple title to the Property, as tenants in common, free and clear of any liens, charges, mortgages, deeds of trust,



deeds to secure debt, mechanics' or materialmen's liens, judgment liens or similar monetary liens and encumbrances, as well as any Tenants or other parties in possession of all or any portion of the Property;

(b) Trustor has the full power and lawful authority to grant, bargain, sell, release, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto Trustee the same;

(c) Trustor has the full and unlimited power, right and authority to execute this Deed of Trust, encumber the Property and assign the Rents;

(d) this Deed of Trust creates a first priority lien under Applicable Law on the Land and Improvements;

(e) the Property includes all property and rights which may be reasonably necessary to promote the present and any reasonable future beneficial use and enjoyment of the Land and Improvements;

(f) Trustor has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification except as provided by Applicable Law;

(g) the Property and, to Trustor's knowledge, the present and contemplated use and occupancy thereof are in full compliance with, or is a legally permitted use under, all Applicable Laws, including, without limitation, zoning ordinances, building codes, land use and Environmental Laws and other similar laws;

(h) power service is provided by the public utility and the Property has accepted or is equipped to accept such utility service;

(i) all public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public;

(j) the Property is free from damage caused by fire or other casualty;

(k) all costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full (except any Improvements to be constructed in the future, which such costs and expenses shall be promptly and fully paid);

(l) all liquid and solid waste disposal located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws;

(m) all current Improvements lie and all future Improvements will lie within the boundary of the Land;

(n) Except for the Permitted Encumbrances, Trustor owns all Property that is personal property free and clear of any liens, claims, security agreements, reservations of title or installment sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(o) Trustor's place of business is located at the address specified below.

5.2 **Representation Regarding Taxes.** Trustor has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Trustor knows of no basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

5.3 **Taxes and Assessments.** Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock, imposed by any public or quasi-public authority or utility company which are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or which may cause any decrease in the value of the Property or any part of it. If any such taxes, levies, charges or assessments become delinquent, Beneficiary may require Trustor to present evidence that they have been paid in full, on ten (10) days' written notice by Beneficiary to Trustor.

5.4 **Performance of Secured Obligations.** Trustor shall promptly pay and perform each Secured Obligation to be performed by it in accordance with its terms.

5.5 **Liens, Charges and Encumbrances.** Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing. Trustor shall pay when due, each obligation secured by or reducible to a lien, charge or encumbrance which now does or later may encumber or appear to encumber all or part of the Property or any interest in it, whether the lien, charge or encumbrance is or would be senior or subordinate to this Deed of Trust.

5.6 **Damages and Insurance and Condemnation Proceeds.**

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment:

(i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which materially affects all or part of the Property or any interest in it; and

(ii) all other awards, claims and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) all proceeds of any insurance policies payable because of loss sustained to all or part of the Property; and

(iv) all interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if:

(i) any damage occurs or any injury or loss is sustained in the amount of \$25,000 or more to all or part of the Property, or any action or proceeding relating to any such damage, injury or loss is commenced; or

(ii) any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

Beneficiary shall have the right, but without obligation to do so, in its own name to appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury or loss to all or part of the Property, and it may make any reasonable compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance.

(c) All proceeds of these assigned claims, other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds in accordance with the terms of the Loan Agreement.

#### 5.7 **Maintenance and Preservation of Property.**

(a) Trustor shall provide and maintain in force at all times the insurances required by the Loan Agreement.

(b) Trustor shall keep the Property in good condition and repair. Except as may be permitted under the Loan Agreement, Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except with Beneficiary's express prior written consent in each instance, which consent shall not be unreasonably delayed or withheld.

(c) All work usually done at the stage of construction shall have been done in a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in compliance with the plans and specifications. Borrower shall also have furnished to Beneficiary such proofs as Beneficiary may require to establish the progress of the work, compliance with Applicable Laws and freedom of the Property from liens.

(d) If all or part of the Property becomes damaged or destroyed, Trustor shall either (i) prepay the entire outstanding balance of the Promissory Note, together with all interest, costs and expenses as set forth in the Promissory Note or (ii) promptly and completely repair

and/or restore the Property in a good and workmanlike manner in accordance with sound building practices.

(c) Trustor shall (i) promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof (collectively, the "**Applicable Laws**"), (ii) from time to time, upon Beneficiary's request, provide Beneficiary with evidence satisfactory to Beneficiary that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws, (iii) give prompt notice to Beneficiary of the receipt by Trustor of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws, and (iv) take appropriate measures to prevent and not engage in or knowingly permit any illegal activities at the Property.

(f) Trustor shall not commit or allow any act upon or use of the Property which would violate any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it hereunder.

(g) Trustor shall not commit or allow waste on the Property, including any waste that arises out of the use, disposal, or storage of any substance which is or becomes designated as a Hazardous Materials (as defined in the Loan Agreement).

(h) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

(i) In the event of a trustee's sale, judicial foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in satisfaction, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance required by this Deed of Trust and any unearned premiums paid thereon shall, without further act, be assigned to and shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Property, and Trustor hereby irrevocably appoints Beneficiary its lawful attorney-in-fact, with full power of substitution, to execute an assignment thereof and any other document necessary to effect such transfer. The appointment granted herein shall be deemed to be a power coupled with an interest.

(j) If Beneficiary is made a party to any litigation, or other action or proceeding, concerning this Deed of Trust, any of the other Loan Documents, the Property or any part thereof or interest therein, or the occupancy of the Property by Trustor or a Tenant of Trustor, then Trustor shall indemnify, protect, defend and hold Beneficiary harmless for, from and against any and all liability by reason of said litigation, or other action or proceeding, including, but not limited to, reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, or other action or proceeding, whether or not any such litigation, or other action or proceeding, is prosecuted to judgment, except to the extent such litigation, action or proceeding is based on the wrongful acts or omissions of the Beneficiary. Upon the occurrence of an Event of Default hereunder, Beneficiary may employ an attorney or attorneys to protect its rights hereunder and under the other Loan Documents, and in the event of such

employment following any breach by Trustor, Trustor shall pay Beneficiary's reasonable attorneys' fees and expenses incurred by such Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(k) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust; provided, however, that this waiver of subrogation shall not be effective with respect to any policy of insurance permitted or required by this Deed of Trust if: (i) such policy prohibits, or if coverage thereunder would be reduced as a result of, such waiver of subrogation; and (ii) Trustor is unable to obtain from a carrier issuing such insurance, a policy that, by special endorsement or otherwise, permits such a waiver of subrogation.

(l) Trustor shall pay, or cause to be paid prior to delinquency, all real property taxes and assessments, general and special, levied by any governmental authority, whether federal, state or local, and all other taxes and assessments of any kind or nature whatsoever including, but not limited to, non-governmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property, or upon Trustor as owner or operator of the Property, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of the above hereinafter referred to, collectively, as "**Impositions**"). If Trustor elects by appropriate legal action to contest any Impositions, Trustor shall not be required to pay the Impositions provided that the contest operates to prevent enforcement or collection of the Impositions, or the sale or forfeiture of the Property, and is prosecuted with due diligence and continuity. Upon termination of any proceeding or contest, Trustor shall pay the amount of the Impositions as finally determined in the proceeding or contest.

(m) Trustor, at no cost or expense to Beneficiary or Trustee, shall appear in and defend any action or proceeding purporting to affect the security or validity of this Deed of Trust, the Guaranty, the interest of Beneficiary herein or therein, or the rights, powers or duties of Beneficiary or Trustee hereunder or thereunder. If Beneficiary and Trustee, or either of them, elects to become a party to such action or proceeding, or is made a party thereto or to any other action or proceeding, of whatever kind or nature, concerning this Deed of Trust, the Guaranty, the Property or any part thereof or interest therein or the occupancy thereof, Trustor shall, or cause the appropriate insurer to, indemnify, protect, defend and hold Trustee and Beneficiary harmless for, from and against any and all liability, damage, cost and expense incurred by Trustee and Beneficiary, or either of them, by reason of said action or proceeding (including, but not limited to, Trustee's reasonable fees and expenses, the reasonable fees and expenses of attorneys for Trustee and for Beneficiary, and other expenses, of whatever kind or nature, incurred by Trustee or Beneficiary, or either of them, as a result of such action or proceeding), whether or not such action or proceeding is prosecuted to judgment or decision. Immediately upon demand therefor by Trustee or Beneficiary, Trustor shall pay thereto an amount equal to Trustor's liability to such person under this Subparagraph, together with interest thereon from

date of expenditure at the highest rate provided in the Secured Obligations; and until paid, such sums shall be secured hereby.

(n) Trustor shall fully and faithfully satisfy and perform the obligations of Trustor contained herein and in each agreement the performance of which is secured hereby, and any modification or amendment hereof or thereof. All obligations, representations, warranties and covenants of Trustor contained herein shall survive the execution and delivery hereof and shall remain continuing obligations, representations, warranties and covenants of Trustor during any time when any portion of the Secured Obligations remain outstanding.

(o) Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation or other taking for public or quasi-public use of the Property or any part thereof, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice of other information regarding such proceeding, action, taking or damage, Trustor shall promptly notify Trustee and Beneficiary of such fact. Trustor shall then, if requested by Beneficiary, file or defend its rights thereunder and prosecute the same with due diligence to its final disposition and shall cause any award or settlement payable to Trustor by virtue of its interest in the Property or any ownership interest it may have in the Improvements, to be paid over to Beneficiary for disposition pursuant to the terms of this Deed of Trust. Any proceeds from such award or condemnation shall be first applied to reimburse Trustee, Beneficiary and Trustor for all costs and expenses, including attorneys' fees, incurred in connection with the collection of such award or settlement. The balance of such award or settlement shall be applied in accordance with the terms and conditions of the Loan Agreement.

5.8 **Trustee's Acceptance of Trust.** Trustee accepts this trust when this Deed of Trust is recorded.

5.9 **Releases, Extensions, Modifications and Additional Security.**

(a) From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(i) release any person liable for payment of any Secured Obligation;

(ii) extend the time for payment, or otherwise alter the terms of

payment, of any Secured Obligation;

(iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or

(iv) alter, substitute or release any property securing the Secured Obligations.

(b) From time to time when reasonably requested to do so by Beneficiary in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person:

- (i) consent to the making of any plat or map of the Property or any part of it;
- (ii) join in granting any easement or creating any restriction affecting the Property;
- (iii) join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or
- (iv) reconvey the Property or any part of it without any warranty.

5.10 **Reconveyance.** When all of the Secured Obligations have been paid in full, Beneficiary shall request Trustee in writing to reconvey the Property, and shall surrender this Deed of Trust and all notes and instruments evidencing the Secured Obligations to Trustee. When Trustee receives Beneficiary's written request for reconveyance and all fees and other sums owing to it by Trustor pursuant to this Deed of Trust, Trustee shall reconvey the Property, or so much of it as is then held under this Deed of Trust, without warranty to the person or persons legally entitled to it. That person or those persons shall pay any costs of recordation. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

5.11 **Compensation, Exculpation, Indemnification.** Trustor agrees to pay any and all fees for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a reconveyance. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be reasonably incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any foreclosure sale and any cost of evidence of title.

(a) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

- (i) Beneficiary's proper exercise of or failure to exercise any rights, remedies or powers granted to it in this Deed of Trust;
- (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or

(iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused by the gross negligence or willful misconduct or bad faith of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(b) Trustor agrees to indemnify, defend and hold harmless Trustee and Beneficiary for, from and against all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which either may suffer or incur:

(i) in properly performing any act required or permitted by this Deed of Trust, the Loan Documents, or by Applicable Law;

(ii) because of any failure of Trustor to perform any of its obligations;  
or

(iii) because of any alleged obligation of or undertaking by Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property.

This agreement by Trustor to indemnify Trustee and Beneficiary shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release and/or reconveyance of this Deed of Trust.

(c) Trustor shall pay all obligations to pay money arising under this Section 5.11 within fourteen (14) days of the due date. Each such obligation shall be added to, and considered to be part of, the principal of the Promissory Note, and shall bear interest from the date the obligation arises at the rate of interest set forth in the Promissory Note.

**5.12 Defense and Notice of Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession (subject to the rights of Tenants) of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim. Trustor will pay such fees, taxes and charges, execute and record or file (at Trustor's expense) such deeds, conveyances, mortgages and financing statements and do all such other acts and things as Beneficiary may from time to time reasonably request to establish and maintain this Deed of Trust as a valid and perfected first and prior lien on and security interest in the Property.

**5.13 Substitution of Trustee.** From time to time, Beneficiary may remove Trustee and appoint a successor Trustee to any Trustee appointed under this Deed of Trust. A Notice of Substitution of Trustee shall be executed and recorded in accordance with Applicable Law.



5.14 **Site Visits, Observation and Testing.** Beneficiary and its agents and representatives shall have the right at any reasonable time during normal business hours (and upon the occurrence of any Event of Default, at any time) to enter and visit the Property for the purpose of performing appraisals. In addition, the Indemnified Party (defined below) shall have the right at any reasonable time during normal business hours (and upon the occurrence of any Event of Default, at any time) to enter and visit the Property for the purpose of observing the Property, and, provided Beneficiary has a reasonable belief that such tests are justified and Trustor has failed to obtain such tests after Beneficiary's request for same, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by any Indemnified Party shall impose any liability on the Indemnified Parties. In no event shall any site visit, observation or testing by any Indemnified Party be a representation that Hazardous Materials are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Materials or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation or testing by Beneficiary. Beneficiary owes no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Materials, any negligent or defective design or construction of the Improvements, or any other adverse condition affecting the Property.

5.15 **Notice of Change.**

(a) Trustor shall give Beneficiary prior written notice of any change in (i) the location of its place of business; (ii) the location of any of the Property, including the Books and Records; and (iii) Trustor's name or business structure.

(b) Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Land and all Books and Records will be located at the offices of Trustor.

VI. **Accelerating Transfers, Default and Remedies.**

6.1 **Accelerating Transfers.**

(a) Trustor agrees that Trustor shall not, without the prior written consent of Beneficiary (a) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred (each of the foregoing is called a "**Transfer**") or (b) permit the transfer of any ownership interest in Trustor (each, an "**Accelerating Transfer**"); provided, however that the foregoing shall not prohibit, and the term Accelerating Transfer shall not include, any Transfer authorized under the terms of the Loan Agreement.

(b) Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee, which consent shall not unreasonably be delayed or withheld. If any Accelerating Transfer occurs, Beneficiary in its sole discretion may declare all of the Secured

Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies provided by Section 6.12 of this Deed of Trust. In the event that Beneficiary does not elect to declare such Secured Obligations immediately due and payable, then, unless indicated otherwise in writing by Beneficiary, Trustor shall nevertheless remain primarily liable for such Secured Obligations. This provision shall apply to each and every sale Accounting Transfer, regardless whether or not Beneficiary has consented to, or waived, Beneficiary's rights hereunder, whether by action or non-action in connection with any previous Accelerating Transfer.

(c) Notwithstanding the preceding provisions, Trustor shall be entitled to dispose of items of the Property that is personal property ("**Personal Property Collateral**") which become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for the operation of the Property, provided that Trustor immediately substitutes and installs replacement Personal Property Collateral of at least comparable worth, value and utility. All such substituted items shall be installed free of all liens and encumbrances and shall become a part of the Property as Personal Property Collateral. Trustor will cooperate with Beneficiary and Trustee and will pay all costs, including, but not limited to, reasonable attorneys' fees, incurred in subjecting to the lien hereof, all items so substituted and Beneficiary will cooperate with Trustor in securing, if necessary, a release from the lien hereof of the Personal Property Collateral for which the substitution is made and in providing such other documents as may be required to facilitate the removal and substitution.

6.2 **Environmental.** In addition to any terms defined elsewhere in this Deed of Trust, as used in this Article VI:

(a) "**Environmental Law**" shall have the meaning assigned in the Loan Agreement.

(b) "**Hazardous Materials**" shall have the meaning assigned in the Loan Agreement.

(c) "**Indemnified Costs**" means all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including, but not limited to, foreseeable and unforeseeable consequential damages), reasonable third party costs and expenses, fines, penalties and losses (including, but not limited to, sums paid in settlement of claims and all consultant, expert and reasonable legal fees and expenses of Beneficiary's counsel), including, but not limited to, those incurred in connection with any investigation of site conditions (at, above or below the surface) or any clean-up, remedial, removal or restoration work (whether of the Property or any other property), or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources.

(d) "**Indemnified Parties**" means and includes Beneficiary, Trustee, their respective subsidiaries and affiliates, assignees of any of Beneficiary's or Trustee's interest in the Loan Documents, any purchasers of the Property at any trustee's sale or judicial foreclosure sale or from Beneficiary, and the members, managers, officers, directors, employees, attorneys and agents of each of them.

6.3 **Indemnity Regarding Hazardous Materials.** Trustor indemnifies and holds the Indemnified Parties harmless for, from and against any and all Indemnified Costs incurred by Indemnified Parties and directly or indirectly arising out of or resulting from any Hazardous Material being present or released in, on or around any part of the Property, or in the soil, groundwater or soil vapor on or under the Property, including, but not limited to:

(a) Any claim for such Indemnified Costs asserted by any federal, state or local governmental agency, including, but not limited to, the United States Environmental Protection Agency and the Utah Department of Environmental Quality, and including, but not limited to, any claim that any Indemnified Party is liable for any such Indemnified Costs as an "owner" or "operator" of the Property under any law relating to Hazardous Materials; and

(b) Any such Indemnified Costs claimed against any Indemnified Party by any person other than a governmental agency, including, but not limited to, any person who may purchase or lease all or any portion of the Property from Trustor, from any Indemnified Party, or from any other purchaser or lessee; any person who may at any time have any interest in all or any portion of the Property; any person who may at any time be responsible for any clean-up costs or other Indemnified Costs relating to the Property; and any person claiming to have been injured in any way as a result of exposure to any Hazardous Material; and

(c) Any such Indemnified Costs which any Indemnified Party reasonably believes at any time must be incurred to comply with any law, judgment, order, regulation or regulatory directive relating to Hazardous Materials, or which any Indemnified Party reasonably believes at any time must be incurred to protect the Property or any Indemnified Party from any liability or loss; and

(d) Any such Indemnified Costs resulting from currently existing conditions in, on or around the Property, whether known or unknown by Trustor or the Indemnified Parties at the time this Deed of Trust is executed, and any such Indemnified Costs resulting from the activities of Trustor, Trustor's lessors or Tenants, or any other person in, on or around the Property.

6.4 **Indemnity Regarding Other Risks.** Trustor indemnifies and holds the Indemnified Parties harmless for, from and against any and all Indemnified Costs directly or indirectly arising out of or resulting from construction of any improvements on the Property, including, but not limited to, any defective workmanship or materials; or any failure to satisfy any requirements of any laws, regulations, ordinances, governmental policies or standards, reports, subdivision maps or development agreements that apply or pertain to the Property; or breach of any representation or warranty made or given by Trustor to any of the Indemnified Parties or to any prospective or actual buyer or lessee of all or any portion of the Property; or any claim or cause of action of any kind by any party that any Indemnified Party is liable for any act or omission of Trustor or any other person or entity in connection with the possession, sublease, operation or development of the Property.

6.5 **Defense of Indemnified Parties.** Upon demand by any Indemnified Party, Trustor shall defend any investigation, action or proceeding involving any Indemnified Costs which are brought or commenced against any Indemnified Party, whether alone or together with

Trustor or any other person, all at Trustor's own cost and by counsel to be approved by the Indemnified Party in the exercise of its sole and absolute discretion. In the alternative, any Indemnified Party may elect to conduct its own defense at the expense of Trustor.

6.6 **Representation and Warranty Regarding Hazardous Materials.** Trustor represents and warrants to Beneficiary that to the best of Trustor's knowledge after reasonable inquiry, no Hazardous Material has been disposed of or released, or otherwise now exists, in, on, under or around the Property, except as to use, generation, manufacture, storage, treatment, disposal or release of Hazardous Materials that are: (a) generally recognized to be appropriate to the normal business uses of Trustor; and (b) in compliance with applicable local, state and federal laws, rules and regulations.

6.7 **Compliance Regarding Hazardous Materials.** Trustor has complied, and shall comply and cause all Tenants and any other persons who may come upon the Property to comply, with all laws, regulations and ordinances governing or applicable to Hazardous Materials, including, but not limited to, those requiring disclosures to prospective and actual purchasers of an interest in all or any portion of the Property.

6.8 **Notices Regarding Hazardous Materials.** Trustor shall promptly notify Beneficiary if it knows, suspects or believes there may be any Hazardous Material in the vicinity of the Property and reasonably likely to affect the Property, at the Property, or in the soil, groundwater or soil vapor on or under the Property, or that Trustor or the Property may be subject to any threatened or pending investigation by any governmental agency under any law, regulation or ordinance pertaining to any Hazardous Material; provided, however, that no such notice is required if the Hazardous Material is: (a) generally recognized to be appropriate to Trustor's normal business uses; and (b) in compliance with applicable local, state and federal laws, rules and regulations.

6.9 **Site Visits, Observations and Testing.** After providing twenty-four (24) hours prior notice (unless an emergency exists), and subject to the rights of Tenants, the Indemnified Parties shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by the Indemnified Parties shall impose any liability on the Indemnified Parties. In no event shall any site visit, observation or testing by the Indemnified Parties be a representation that Hazardous Materials are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Materials or any other Applicable Law. Neither Trustor, nor any other party, is entitled to rely on any site visit, observation or testing by the Indemnified Parties. The Indemnified Parties owe no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Materials or any other adverse condition affecting the Property. The Indemnified Parties shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section 6.9.

6.10 **Survival.** The provisions of Sections 6.2 through 6.9 survive the repayment and performance of the Secured Obligations and satisfaction of this Deed of Trust, trustee's sale or judicial foreclosure of this Deed of Trust.

6.11 **Events of Default.**

Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all together, "**Events of Default**;" any one singly, an "**Event of Default**");

(a) Trustor fails to perform any obligation to pay money which arises under this Deed of Trust, and does not cure that failure within ten (10) business days after written notice from Beneficiary or Trustee;

(b) This Deed of Trust is not a first priority lien on the Land and Improvements;

(c) Trustor fails to perform any obligation arising under this Deed of Trust other than one to pay money, and does not cure that failure within thirty (30) days after written notice from Beneficiary or Trustee;

(d) the occurrence of an Event of Default (as defined in) and pursuant to the Loan Agreement or any other Loan Document that is not cured within the applicable cure periods prescribed therein;

(e) any breach or default under the Guaranty that is not cured within the applicable cure periods prescribed in such Guaranty;

(f) Trustor makes or permits the occurrence of an Accelerating Transfer in violation of Section 6.1; or

(g) Any representation or warranty made in connection with this Deed of Trust or the Guaranty proves to have been false or misleading in any material respect when made.

6.12 **Remedies.** At any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property without regard to the value of the Property.

(c) Beneficiary, in person, by agent or by court appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and

all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. Regardless of any provision of this Deed of Trust, Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Trustor to Beneficiary, unless Beneficiary has given express written notice of its election of that remedy.

(d) Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Subparagraph 6.12(d) either with or without giving notice to any person except as required by law.

(e) Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(f) Beneficiary may bring an action in any court of competent jurisdiction to foreclose this instrument or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

(g) Under this power of sale, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by Applicable Law.

(i) For purposes of this power of sale, Beneficiary may elect to treat as personal property any Property which is intangible or which can be severed from the Land or

Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by the UCC, including any public or private sale, or in any manner permitted by any other Applicable Law.

(ii) Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by Applicable Law. In its discretion, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as permitted by Applicable Law. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with the UCC, will sometimes be referred to as a "Trustee's Sale."

Before any Trustee's Sale, Beneficiary or Trustee shall give such notice of default and election to sell as may then be required by Applicable Law. When all time periods then legally mandated have expired, and after such Notice of Sale as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the Notice of Sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then Applicable Law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by public announcement at the time and place noticed for that sale.

At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all persons as to the facts recited in it.

6.13 **Credit Bids.** At any foreclosure sale any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then Applicable Law. Instead of paying cash for that property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) first, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 5.11; and

(b) second, all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

6.14 **Application of Foreclosure Sale Proceeds.** Beneficiary and Trustee shall apply the proceeds of any foreclosure sale in the following manner:

(a) first, to payment of the costs and expenses of taking possession of the Property, and of the costs and expenses of the sale, including but not limited to Trustee's actual,

reasonable, out of pocket fees, legal fees and disbursements, title charges and transfer taxes, and payment of all actual, reasonable, out of pocket expenses, liabilities and advances of Trustee;

(b) second, payment of all sums expended by Beneficiary under the terms of this Deed of Trust and not yet repaid, together with interest on such sums at the Default Rate;

(c) third, to payment of the secured indebtedness and all other Secured Obligations secured by this Deed of Trust, including, without limitation, interest at the Default Rate provided for under the Promissory Note, and any charge expressly required to be paid thereunder in order to prepay principal, in any order that Beneficiary chooses in its sole discretion; and

(d) finally, to remit the remainder, if any, to the person(s) entitled to it.

6.15 **Application of Rents and Other Sums.** Beneficiary shall apply any and all Rents collected by it, and any and all sums, other than proceeds of a Trustee's Sale or a judicial foreclosure sale under this Deed of Trust, which Beneficiary may receive or collect under Section 6.12, in the following manner:

(a) first, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Trustee, Beneficiary or any receiver;

(b) second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(c) third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

## **VII. General Provisions.**

### **7.1 No Waiver or Cure.**

(a) Each waiver by Beneficiary or Trustee must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. In the event of reinstatement of the Secured Obligations after an Event of Default in accordance with Applicable Law, Trustee shall record a Cancellation of Notice of Sale. Reinstatement of an Event of Default shall not constitute a waiver of any Event of Default then existing or subsequently occurring, nor impair the right of Beneficiary to declare other Events of Default or the right to cause Trustee to record a Notice of Sale, nor otherwise affect this Deed of Trust or any of the Loan Documents, or any of the rights, obligations, or remedies of Beneficiary or Trustee in this Deed of Trust or any of the Loan Documents.



(b) If any of the events described below occurs, that event alone shall not cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subparagraph 6.12(c).

(ii) Beneficiary collects and applies Rents as permitted under Sections 2.1 and 6.15, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary receives and applies to any Secured Obligation proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under Section 5.6.

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.14 or Section 6.9.

(v) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

## **7.2 Powers of Beneficiary and Trustee.**

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) If either Beneficiary or Trustee performs any act which it is empowered or authorized to perform under this Deed of Trust, including any act permitted by Section 5.9 or Subparagraph 6.12(d), that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(c) Beneficiary may take any of the actions permitted under Subparagraphs 6.12(b) and/or 6.12(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(d) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming or approving acts in executing this trust and enforcing these rights and remedies.

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

7.4 **Joint and Several Liability.** If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

7.5 **Applicable Law.** This Deed of Trust, including the creation and perfection of the liens and security interests in the Property, and the rights and remedies of Beneficiary, and Trustee as provided herein, shall be governed by and construed in accordance with the internal laws of the State of Utah without regard to principles of conflicts of law.

7.6 **Submission to Jurisdiction.** Trustor and, by acceptance hereof, Beneficiary hereby irrevocably (a) submit to the non-exclusive jurisdiction of any Utah state or federal court sitting in the City of Salt Lake over any suit, action or proceeding arising out of or relating to this Deed of Trust or the other Loan Documents, (b) waive any objection which it may have at any time to the laying of venue of any action or proceeding brought in any such court, (c) waive any claim that such proceedings or actions have been brought in an inconvenient forum and (d) waive the right to object, with respect to such action or proceeding, that such court does not have jurisdiction over such party. Trustor hereby agrees and consents that, in addition to any methods of service of process provided for under Applicable Law, all service of process in any such suit, action or proceeding in any Utah state or federal court sitting in the City of Salt Lake may be made by certified or registered mail, return receipt requested, directed to Trustor and Beneficiary, as applicable at the address for notices pursuant to Section 7.12, and service so made shall be complete five (5) days after the same shall have been so mailed.

7.7 **Successors in Interest.** The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 7.7 does not waive the provisions of Section 6.1.

7.8 **Interpretation.**

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

7.9 **Waiver of Marshalling.** Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshalling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

7.10 **WAIVER OF TRIAL BY JURY. TRUSTOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THE PROMISSORY NOTE, THE LOAN AGREEMENT, THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF BENEFICIARY, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

7.11 **Severability.** If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may at its option, declare all Secured Obligations immediately due and payable.

7.12 **Notices.** Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, sent by confirmed facsimile (with hard copy mailed), or sent by courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a confirmed facsimile, or three (3) days after deposit in the United States mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section 7.12) shall be set forth on the first page of this Deed of Trust, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

7.13 **Further Assurances; Filing; Re-Filing; etc.**

(a) Trustor shall execute, acknowledge and deliver, from time to time, such further instruments as may be necessary, or that Trustee or Beneficiary may reasonably require to accomplish the purposes of this Deed of Trust.

(b) Trustor, immediately upon the execution and delivery of this Deed of Trust, and thereafter from time to time, shall cause this Deed of Trust, any security agreement or mortgage supplemental hereto and each instrument of further assurance to be executed, acknowledged, filed, registered or recorded and refiled, re-registered or re-recorded in such manner and in such places as may be required by Trustee or Beneficiary or by any present or future law in order to publish notice of and perfect the lien and estate of this Deed of Trust upon, and security interest in, the Property.

(c) Trustor shall pay all filing, registration and recording fees, all re-filing, re-registration and re-recording fees, and all expenses incident to the execution, filing, recording and acknowledgment of this Deed of Trust, any security agreement or mortgage supplemental hereto and any instrument of further assurance, and all Federal, state, county and municipal stamp taxes, mortgage taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing and recording of the Notes, this Deed of Trust or any of the other Loan Documents, any security agreement or mortgage supplemental hereto or any instruments of further assurance.

[SIGNATURE PAGE FOLLOWS]



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

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Legal Description of the Land

The real property referenced in the foregoing instrument is located in Davis County, Utah and is more particularly described as:

PARCEL 1:

All of Lot 402, LEGACY CROSSING AT PARRISH LANE LOT 4 AMENDED, according to the official plat thereof, recorded in the office of the County Recorder of Davis County, State of Utah on February 4, 2014 as Entry No. 2788626 in Book 5948 at Page 369.

ALSO including a portion of Lot 405, Legacy Crossing at Parrish Lane Lot 4 Amended, according to the official plat thereof, recorded in the office of the County Recorder of Davis County, State of Utah, more particularly described as follows:

Beginning at the Northwest corner of Lot 405, Legacy Crossing at Parrish Lane Lot 4 Amended, according to the official plat thereof as recorded in the office of the Davis County Recorder and running thence South 86°08'42" East 78.64 feet along the North line of said Lot 405; thence South 03°51'18" West 197.11 feet; thence North 86°08'42" West 65.36 feet to the West line of said Lot 405; thence North 197.56 feet along the West line of said Lot 405 to the point of beginning.

PARCEL 1A:

A non-exclusive perpetual easement on, over, across and through the easement area for vehicular and pedestrian ingress to and egress from all on the Grantor's property as described in that certain Access Easement recorded September 20, 2010 as Entry No. 2553826 in Book 5112 at Page 821, now known as Legacy Crossing Boulevard, (300 North), a private road.

PARCEL 1B:

A non-exclusive easement over, across, through and around the Common Areas of each of Lot 1, Lot 2, Lot 3, Lot 4, Lot 5 and Lot 6, for the purpose of providing and permitting pedestrian and vehicular ingress, egress, and cross-access to adjacent lots, parcels and public rights-of-way, including without limitation, ingress, egress and cross-access for commercial delivery vehicles in accordance with truck route and pedestrian and vehicular circulation patterns as approved by Centerville City, Utah, for the subject property, as created by Declaration of Parking and Cross-Access Easement and other easements and restrictions affecting the land recorded on October 29, 2010 as Entry No. 2563121 in Book 5141 at Page 1013.

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

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Permitted Encumbrances

1. Ordinance No. 2010-02 Adopting the Project Area Plan, as Approved by the Board of Directors of the Redevelopment Agency of Centerville City, as the Official Community Development Project Area Plan for the Centerville Parrish-Legacy Crossing Community Development Project Area #2010-01, recorded April 13, 2010 as Entry No. 2522281 in Book 5002 at Page 28.
2. Easements, notes and restrictions as shown on the recorded plat for Legacy Crossing at Parrish Lane Lot 4 Amended, recorded February 4, 2014 as Entry No. 2788626 in Book 5948 at Page 369.
3. Storm Drain Improvements Agreement by and between Centerville City, a Utah municipal corporation and Parrish Land Holdings, LLC, a Utah limited liability company, dated January 29, 2008 and recorded January 31, 2008 as Entry No. 2338076 in Book 4460 at Page 818.
4. Access Easement in favor of Legacy Crossing, LLC, a Utah limited liability company for an easement for ingress and egress as well as an easement for the installation and ongoing maintenance of public utilities over and across said Land and incidental purposes, by instrument dated September 15, 2010 and recorded September 20, 2010, as Entry No. 2553826, in Book 5112, at Page 821.
5. Declaration of Parking and Cross-Access Easement and Other Easements and Restrictions Affecting Land by and between Parrish Land Holdings, LLC, a Utah limited liability company and Legacy Crossing, LLC, a Utah limited liability company, dated September 27, 2010 and recorded October 29, 2010 as Entry No. 2563121 in Book 5141 at Page 1013. First Amendment to Declaration of Parking and Cross-Access Easement and Other Easements and Restrictions Affecting Land, recorded October 3, 2012 as Entry No. 2691298 in Book 5619 at Page 718. Second Amendment to Declaration of Parking and Cross-Access Easement and Other Easements and Restrictions Affecting Land, recorded February 26, 2014 as Entry No. 2791683 in Book 5963 at Page 411. Third Amendment to Declaration of Parking and Cross-Access Easement and Other Easements and Restrictions Affecting Land, recorded February 13, 2018 as Entry No. 3075702 in Book 6951 at Page 953.
6. Easement in favor of South Davis Sewer District, for a perpetual right-of-way and easement to construct, maintain, operate, repair, inspect, protect, install, remove and replace sewer pipelines, valves, valve boxes and other sewer transmission and distribution structures and facilities, by instrument recorded June 22, 2012 as Entry No. 2668906 in Book 5549 at Page 25.

Deed in favor of South Davis Sewer District, dated May 30, 2012 and recorded June 22, 2012 as Entry No. 2668907 in Book 5549 at Page 28.

7. Legacy Crossing at Parrish Lane Development Agreement & Exhibits, recorded September 28, 2010 as Entry No. 2555652 in Book 5118 at Page 526. Assignment and Assumption Agreement by and between Legacy Crossing LLC, a Utah limited liability company, Legacy Crossing Theatre, LLC, a Utah limited liability company and Centerville City, a Utah municipal corporation, dated October 5, 2010 and recorded October 20, 2010 as Entry No. 2560848 in Book 5134 at Page 1522.

Assignment and Assumption Agreement by and between Legacy Crossing LLC, a Utah limited liability company, Parrish Land Holdings, LLC, a Utah limited liability company, Legacy Crossing Theatre, LLC, a Utah limited liability company, Legacy Crossing Owners Association, Inc., a Utah non-profit corporation and Centerville City, a Utah municipal corporation, dated September 18, 2012 and recorded September 20, 2012 as Entry No. 2688238 in Book 5610 at Page 176

First Amendment to Development Agreement Between Centerville City, Parrish Land Holdings, LLC, Legacy Crossing LLC, Legacy Crossing Theatre, LLC, Legacy Crossing Apartments, L.C., Summerwood Holdings II, LLC, and Legacy Crossing Owners Association, Inc., recorded September 20, 2012 as Entry No. 2688239 in Book 5610 at Page 186.

Second Amendment to Development Agreement Between Centerville City, Parrish Land Holdings, LLC, Legacy Crossing LLC, Legacy Crossing Theatre, LLC, Legacy Crossing Apartments, L.C., Summerwood Holdings II, LLC, and Legacy Crossing Owners Association, Inc., recorded October 3, 2012 as Entry No. 2691299 in Book 5619 at Page 728.

Assignment and Assumption Agreement by and between Legacy Crossing LLC, a Utah limited liability company, Legacy Office Building, LLC, a Utah limited liability corporation, Summerwood Holdings II, LLC, a Utah limited liability corporation, ES 135488 LC, a Utah limited liability company and Centerville City, a Utah municipal corporation, dated November 22, 2013 and recorded February 4, 2014 as Entry No. 2788625 in Book 5948 at Page 360.

Third Amendment to Development Agreement Between Centerville City, Parrish Land Holdings, LLC, Legacy Crossing LLC, Legacy Crossing Theatre, LLC, Legacy Crossing Apartments, L.C., Summerwood Holdings II, LLC, Legacy Crossing Owners Association, Inc., Legacy Office Building, LLC and ES 135488 LC, recorded February 26, 2014 as Entry No. 2791684 in Book 5963 at Page 423.

Assignment and Assumption Agreement (Lot 2, Lot 3, Lot 401, Lot 404 and Lot 408) Legacy Crossing at Parrish Lane of the Legacy Crossing at Parrish Lane Subdivision and Lot 4 Amended Subdivision by and between Centerville City, a Utah municipal corporation, HCR Legacy, LLC, a Utah limited liability company, KEM Holdings, LLC, a Utah limited liability corporation, Teton Office Ventures LLC, a Utah limited liability company and S&J 5, LLC, a Utah limited liability company, dated February 13, 2018 and recorded February 13, 2018 as Entry No. 3075700 in Book 6951 at Page 923.



Fourth Amendment to Development Agreement Between Centerville City, JF Legacy Land, LLC, HCR Legacy, LLC, KEM Holdings, LLC, Legacy Crossing Theatre, LLC, Legacy Crossing Apartments, L.C., Legacy Crossing Owners Association, Inc., JENSNT Legacy, LLC, Teton Office Ventures, LLC, Legacy Office Building, LLC and S & J 5, LLC, recorded February 13, 2018 as Entry No. 3075701 in Book 6951 at Page 930.

8. Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in that certain Declaration of Conditions, Covenants, and Restrictions Legacy Crossing at Parrish Lane recorded October 29, 2010 as Entry No. 2563122 in Book 5141 at Page 1017, but omitting any covenant, condition or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the covenant, condition or restriction (a) is exempt under Title 42 of the United States Code, or (b) relates to handicap, but does not discriminate against handicapped persons.