

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Wick Phillips Gould & Martin, LLP  
3131 McKinney Avenue, Suite 100  
Dallas, Texas 75204  
Attention: Michael Bailey

APN(s): 21-15-176-010

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

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

THIS DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY FROM TIME TO TIME AS SET FORTH THEREIN.

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

Project Common Known As  
"The Crossroads of Taylorsville"

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of September 27, 2018, by TPP 217 TAYLORSVILLE, LLC, a Delaware limited liability company ("Trustor") whose address is 1717 Main Street, Suite 2600, Dallas, TX 75201, in favor of JOHN HOLT ("Trustee") whose address is 2515 McKinney Avenue, Suite 1100, Dallas, Texas 75201 for the benefit of NEXBANK SSB, its successors and assigns ("Beneficiary") whose address is 2515 McKinney Avenue, Suite 1100, Dallas, Texas 75201.

1. Grant and Secured Obligations.

1.1. Grant. For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Trustor hereby irrevocably and unconditionally grants, bargains, sells, transfers, conveys, mortgages and warrants to Trustee, in trust, for the benefit of Beneficiary, with power of sale and with 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 (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 estate situated in Salt Lake County, Utah, which is more particularly described in Exhibit A attached hereto and made a part hereof for all purposes the same as if set forth herein verbatim, together with all right, title and interest of Trustor in and to (i) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the real property or the Improvements (as hereinafter defined); (ii) any strips or gores between the real property and abutting or adjacent properties; and (iii) all water and water rights, timber, crops and mineral interests pertaining to the real property (such real estate and other rights, titles and interests being hereinafter sometimes called the "Land");

(b) all buildings, structures and other improvements (such buildings, structures and other improvements being hereinafter sometimes called the "Improvements") now or hereafter situated on the Land;

(c) all fixtures, equipment, systems, machinery, furniture, furnishings, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, now owned or hereafter acquired by Trustor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing, including, but without limiting the foregoing, any and all fixtures, equipment, machinery, systems, facilities and apparatus for heating, ventilating, air conditioning, refrigerating, plumbing, sewer, lighting, generating, cleaning, storage, incinerating, waste disposal, sprinkler, fire extinguishing, communications, transportation (of people or things, including, but not limited to, stairways, elevators, escalators and conveyors), data processing, security and alarm, laundry, food or drink preparation, storage or serving, gas, electrical and electronic, water, and recreational uses or purposes; all tanks, pipes, wiring, conduits, ducts, doors, partitions, rugs and other floor coverings, wall coverings, windows, drapes, window screens and shades, awnings, fans, motors, engines and boilers; and decorative items and art objects (all of which are herein sometimes referred to together, as the "Accessories");

(d) all (i) plans and specifications for the Improvements; (ii) contracts relating to the Land, or the Improvements or the Accessories or any part thereof; (iii) deposits,

(including, but not limited to, Trustor's rights in tenants' security deposits, deposits with respect to utility services to the Land, or the Improvements or the Accessories or any part thereof, and any deposits or reserves hereunder or under any other Loan Document (as hereinafter defined) for taxes, insurance or otherwise, funds, accounts, contract rights, instruments, documents, commitments, general intangibles (including, but not limited to, trademarks, trade names and symbols), notes and chattel paper used in connection with or arising from or by virtue of any transactions related to the Land, or the Improvements or the Accessories or any part thereof; (iv) permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Land, or the Improvements or the Accessories or any part thereof; (v) leases, subleases, subtenancies, licenses, rental agreement occupancy agreements, and concessions relating to the use and enjoyment of or affecting all or any part of the Land or Improvements, any and all guaranties, extensions, renewals, replacements and modifications thereof, and all other agreements relating to or made in connection therewith, and any agreement (written or oral) between Trustor or its agents, and any tenant, lessee, occupant, licensee, guest or invitee pursuant to which Trustor, or its agent, agrees to permit such tenant, lessee, occupant, licensee, guest or invitee to park in or at the Land or Improvements (each a "Lease", and collectively, the "Leases") (vi) rents, royalties, bonuses, issues, profits, revenues and other benefits of the Land, the Improvements and the Accessories; and (vii) other properties, rights, titles and interests, if any, specified in any Section or any Article of this Deed of Trust as being part of the Property; and

(e) all (i) proceeds of or arising from the properties, rights, titles and interests referred to above in paragraphs (a), (b), (c) and (d), including, but not limited to, proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto by eminent domain or sale in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto whether caused by such a taking (including change of grade of streets, curb cuts or other rights of access) or otherwise caused; and (ii) other interests of every kind and character, and proceeds thereof, which Trustor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in paragraphs (a), (b), (c) and (d) and all property used or useful in connection therewith, including, but not limited to, remainders, reversions and reversionary rights or interests. In the event the estate of Trustor in and to any of the Property is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other further or additional title, estates, interest or rights which may exist now or at any time be acquired by Trustor in or to the property demised under the lease creating such leasehold estate and including Trustor's rights, if any, to the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Trustor such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Trustor had fee simple title to said property as of the date of execution hereof.

TO HAVE AND TO HOLD the Property, unto Trustee and Trustee's successors, substitutes or assigns, in trust and for the uses and purposes herein set forth, forever, together with all rights, privileges, hereditaments and appurtenances in anywise appertaining or belonging thereto, subject only to the Permitted Exceptions (to the extent that the same are valid, subsisting

and affect the Property), and Trustor, for Trustor and Trustor's successors, hereby agrees to warrant and forever defend, all and singular, the Property unto Trustee and trustee's successors or substitutes in this trust against the claim or claims of all persons claiming or to claim the same or any part thereof, subject, however, as aforesaid.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to in Subsection 1.2(a)(iii) below.

1.2. Secured Obligations.

(a) Trustor makes the grant, conveyance, and mortgage set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(i) Payment of all obligations at any time owing under a promissory note (the "Note") bearing even date herewith, payable by Trustor as maker in the stated principal amount of SIXTY NINE MILLION AND NO/100 DOLLARS (\$69,000,000.00) to the order of Beneficiary; and

(ii) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(iii) Payment and performance of all obligations of Trustor under a Loan Agreement bearing even date herewith between Trustor as "Borrower" and Beneficiary as "Lender" (the "Loan Agreement"); and

(iv) Payment and performance of any obligations of Trustor under any Loan Documents which are executed by Trustor; and

(v) 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; and

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

(b) 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. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Rents.

2.1. Assignment. Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all "Rents" as such term is defined in the Utah Act (as defined below), rents, issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property (collectively, "Rents"), and hereby gives to and confers upon Beneficiary the immediate and continuing right, power and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Secured Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor. The assignment of the Rents of the Property in this Section 2 is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary's rights to the Rents are not contingent upon and may be exercised without possession of the Property.

2.2. Grant of License. Beneficiary hereby confers upon Trustor a license (the "License") to collect and retain the Rents as they become due and payable, unless or until the occurrence of an Event of Default. Upon the occurrence, and during the continuance, of an Event of Default, the License shall automatically terminate without notice to Trustor, and without prejudice to Beneficiary. Beneficiary may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Beneficiary and Trustor agree that the mere recordation of this Deed of Trust entitles Beneficiary immediately to collect and receive Rents upon the occurrence of an Event of Default without first taking any enforcement action under applicable laws, such as, but not limited to, providing notice to Trustor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver.

2.3. Collection Upon an Event of Default. Upon the occurrence, and during the continuance, of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Property, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) to payment of the Secured Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Property, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Property and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new Leases, to cancel, surrender, alter or amend the terms of, and/or renew existing Leases, and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

2.4. Application of Rents.

(a) Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Secured Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Property; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.

(b) In connection herewith, Trustor further agrees that all Rents received by Beneficiary from any lessee may be allocated, if Beneficiary so elects, to the payment of all current obligations of such lessee under its Lease and not to amounts which may be accrued and unpaid as of the date of revocation of Trustor's license to collect such Rents. Beneficiary may, but shall have no obligation to, pursue any lessee for the payment of Rents which may be due under its Lease with respect to any period prior to the exercise of Beneficiary's rights under this assignment or which may become due thereafter. Beneficiary shall not be liable to any lessee for the payment or return of any security deposit under any Lease unless and to the extent that such security deposit has been paid to and received by Beneficiary, and Trustor agrees to indemnify, defend and hold Beneficiary harmless from and against any and all losses, claims, damages or liabilities arising out of any claim by a lessee with respect thereto, except from such matters arising from Beneficiary's gross negligence or willful misconduct. Trustor further agrees that the collection of Rents by Beneficiary and the application of such Rents by Beneficiary to the costs, expenses and obligations referred to herein shall not cure or waive any default or Event of Default or invalidate any act (including, but not limited to, any sale of all or any portion of the Property or any property now or hereafter securing the Loan) done in response to or as a result of such Event of Default or pursuant to any notice of default or notice of sale issued pursuant to this Deed of Trust.

2.5. Protection of Leases. Trustor and Beneficiary agree that all lessees under any Leases shall be subject to the provisions of this assignment. In connection therewith, Trustor and Beneficiary further agree as follows:

(a) Notice to Lessees of Assignment. Upon the occurrence and during the continuance of an Event of Default, if requested by Beneficiary with respect to any Lease on the Property, Trustor shall: (i) notify each lessee under any Lease now or hereafter existing, of the existence of this assignment and the rights and obligations of Trustor and Beneficiary hereunder; and (ii) provide each present or future lessee with a copy of this Deed of Trust and the assignment of leases hereunder.

(b) Reference to Assignment. All Leases on the Property hereafter executed with respect to the Property or any portion thereof shall contain a reference to this Deed of Trust and the assignment of leases hereunder and shall state that such lessee shall be subject to and shall comply with the provisions of Section 2 hereof.

(c) Occurrence of Event of Default. Upon the occurrence of an Event of Default and at any time thereafter during the continuance thereof, Beneficiary may, at its option, send any lessee under a Lease a notice to the effect that: (i) an Event of Default has occurred and that Beneficiary has revoked Trustor's license to collect the Rents; (ii) Beneficiary has elected to exercise its rights under this assignment; and (iii) such lessee is thereby directed to thereafter make all payments of Rents and to perform all obligations under its Lease for the benefit of Beneficiary or as Beneficiary shall direct.

(d) Notice to Lessee to Comply with Leases. Upon receipt of any such notice from Beneficiary, each lessee is hereby instructed by Trustor and Beneficiary to comply with the provisions of such notice, to make all payments of Rents and to perform all obligations under the Lease to and for the benefit of Beneficiary or as Beneficiary shall direct. Such notice and direction shall remain effective until the first to occur: (i) the receipt by any such lessee of a subsequent notice from Beneficiary to the effect that such Event of Default has been cured or that Beneficiary has appointed Trustor to act as agent for Beneficiary pursuant to this assignment; (ii) the appointment of a receiver pursuant to this assignment, in which event such lessee shall thereafter make payments of Rents and perform all obligations under the Leases as may be directed by such receiver; or (iii) the issuance of an order of a court of competent jurisdiction terminating this assignment or otherwise directing such lessee to pay Rents and perform its obligations in a manner inconsistent with said notice.

(e) Lessee's Reliance on Notice from Beneficiary. Each lessee shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rents made pursuant to such notice.

(f) No Duty for Lessee to Investigate. Each lessee who receives a notice from Beneficiary pursuant to this assignment shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this assignment. Trustor hereby agrees to indemnify, defend and hold such lessee harmless from and against any and all loss, claim, damage or liability arising from or related to payment of Rents or performance of obligations under any Lease by such lessee made in good faith in reliance on and pursuant to such notice.

(g) No Assumption by Beneficiary of Lease Obligations. The payment of Rents to Beneficiary pursuant to any such notice 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 the provisions of such Lease, including, but not limited to, any duty to return any security deposit to the lessee under such Lease unless and to the extent such security deposit was paid to Beneficiary by Trustor.

(h) Assignment Binding on Lessees. The provisions of this Section 2.5 are expressly made for the benefit of and shall be binding on and enforceable by each lessee under any Lease now or hereafter affecting all or any portion of the Property.

2.6. Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce or obtain Rents from the Project. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Project or Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be:

- (a) A "Beneficiary in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any Lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it unless such liability is caused by Beneficiary's gross negligence or willful misconduct.

2.7. Leasing. Trustor shall not accept any deposit or prepayment of rents under the Leases for any rental period exceeding one (1) month without Beneficiary's prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement.

2.8. Assignment of Rents Act. This Section 2 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated, § 57-26-101 et seq.* (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Section 2 and the provisions of the Act, the provisions of the Utah Act shall control.

### 3. Grant of Security Interest.

3.1. Security Agreement. The parties intend for this Deed of Trust to create a lien and security interest on the Property in favor of Beneficiary. The parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures (collectively, "Personal Property"). To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants and conveys to Beneficiary as secured party a security interest in all such Personal Property, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Article 9a of Uniform Commercial Code of the State of Utah, *Utah Code Ann. Section 70A-9a – 101 et seq.* (the "Code"), covering all such Property.

3.2. Financing Statements. Trustor shall, at the request of Beneficiary, execute one or more 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. As provided in Section 5.9 below, 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 for the perfection or continuation of any security interest, 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. Any initial financing statements and amendments thereto may (a) indicate the Personal Property, or other properties, rights, interests and privileges in which Beneficiary is granted a security interest pursuant to this Deed of Trust: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Personal Property or other properties, rights, interests and privileges described herein fall within the scope of the Code or similar provision of any other applicable jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of the Code or similar provision of any other applicable jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9a-509 of the Code or similar provision of any other applicable jurisdiction.

4. **Fixture Filing.**

This Deed of Trust constitutes a financing statement filed as a fixture filing under the Code, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Project or Improvements. For this purpose, the respective addresses of Trustor, as debtor, and Beneficiary and Trustee, as secured parties, are as set forth in the preambles of this Deed of Trust.

5. **Rights and Duties of the Parties.**

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

- (a) Trustor lawfully possesses and holds fee simple title to all of the Project and Improvements;
- (b) Trustor has or will have good title to all Personal Property;
- (c) Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;
- (d) This Deed of Trust creates a first and prior lien on the Property;
- (e) The Property includes all property and rights which may be reasonably necessary to use the Project and Improvements as presently intended;
- (f) Any portion of the Property which is Personal Property and which is owned by Trustor is free and clear of any security agreements, reservations of title or conditional sales contracts, other than the Loan Documents and there is no financing statement affecting such Personal Property on file in any public office, except in favor of Lender; and

(g) Trustor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified above.

5.2. Intentionally Deleted.

5.3. Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4. Liens, Charges and Encumbrances. Trustor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing in accordance with the terms of Section 9.1(c) of the Loan Agreement.

5.5. Damages and Insurance and Condemnation Proceeds. In the event of any casualty or condemnation of the Property, the provisions of Article X of the Loan Agreement shall govern.

5.6. Maintenance and Preservation of Property.

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair, normal wear and tear excepted.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, or add to the Property, or initiate or allow any change in any zoning or other Project use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Beneficiary's express prior written consent in each instance.

(c) Trustor shall not commit any act upon or use of the Property which would violate in any material respect: (i) any applicable Laws or order of any Governmental Authority; or (ii) 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, if 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 under the Loan Agreement.

(d) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

(e) 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.

5.7. Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

(a) Release any person liable for payment of any Secured Obligation;

(b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

(c) 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;

(d) Alter, substitute or release any property securing the Secured Obligations;

(e) Consent to the making of any plat or map of the Property or any part of it;

(f) Join in granting any easement or creating any restriction affecting the Property;

(g) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or

(h) Release the Property or any part of it.

5.8. Release. When all of the Secured Obligations have been paid in full, Beneficiary and Trustee shall release and reconvey, as applicable, this Deed of Trust, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Trustor shall pay any costs of preparation and recordation of such release.

5.9. Compensation, Exculpation, Indemnification.

(a) Trustor agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under Section 6.3, 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 (as defined in Subsection 6.3(i) below) and any cost of evidence of title.

(b) Neither Beneficiary nor Trustee shall be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

(i) Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee 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, willful misconduct and 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 or Trustee.

**(c) TRUSTOR AGREES TO INDEMNIFY BENEFICIARY AND TRUSTEE AGAINST AND HOLD THEM HARMLESS FROM ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF PROVING TITLE, COST OF EVIDENCE OF PROVING VALUE, AND OTHER COSTS AND EXPENSES WHICH THEY MAY SUFFER OR INCUR:**

**(i) IN PERFORMING ANY ACT REQUIRED OR PERMITTED BY THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS OR BY 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 AND/OR TRUSTEE TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS IN ANY DOCUMENT RELATING TO THE PROPERTY OTHER THAN THE LOAN DOCUMENTS.**

**THIS AGREEMENT BY TRUSTOR TO INDEMNIFY BENEFICIARY AND TRUSTEE SHALL SURVIVE THE RELEASE AND CANCELLATION OF ANY OR ALL OF THE SECURED OBLIGATIONS AND THE FULL OR PARTIAL RELEASE OF THIS DEED OF TRUST. TRUSTOR'S DUTY TO INDEMNIFY AND HOLD BENEFICIARY AND TRUSTEE HARMLESS EXTENDS TO LOSS THAT MAY BE CAUSED OR ALLEGED TO BE CAUSED IN PART BY THE NEGLIGENCE OF BENEFICIARY OR TRUSTEE TO THE FULLEST EXTENT THAT SUCH INDEMNIFICATION IS PERMITTED BY APPLICABLE LAW.**

(d) Trustor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.10. 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 of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Trustor shall give Beneficiary prompt notice in writing if

any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11. Intentionally deleted.

5.12. Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives 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 any of Beneficiary, its agents or representatives. Neither Beneficiary, its agents or representatives owe any duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Beneficiary shall give Trustor reasonable notice before entering the Property. Beneficiary shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section 5.12.

5.13. Notice of Change. Trustor shall give Beneficiary prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Trustor's name or business structure. 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 Project and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

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

6.1. Accelerating Transfers.

(a) "Accelerating Transfer" means any Transfer not expressly permitted under Section 11.2 of the Loan Agreement.

(b) Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, unless the transfer either (i) results in the simultaneous repayment of all Secured Obligations or (ii) is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. 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 may invoke any rights and remedies provided by Section 6.3 of this Deed of Trust.

6.2. Events of Default. Trustor will be in default under this Deed of Trust upon the occurrence and during the continuance of any Event of Default, as defined in the Loan Agreement (some or all collectively, "Events of Default", and any one singly, an "Event of Default").

6.3. Remedies. At any time after the occurrence, and during the continuance, of an Event of Default, Beneficiary or Trustee (at Beneficiary's direction), as applicable, shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary or Trustee at law or in equity. 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) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Beneficiary shall, as a matter of right, without notice and without giving bond to Trustor or anyone claiming by, under or through Trustor, and without regard for the solvency or insolvency of Trustor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Trustor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Beneficiary would have, upon entering and taking possession of the Property under subsection (c) below. In addition to any other rights provided for in this Deed of Trust, Beneficiary may appoint a receiver as and when provided in the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Ann. § 78B-21-101 et seq.*

(c) Entry. 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 Beneficiary; 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 Project and make all of it available to Beneficiary at the site of the Project. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's 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.

(d) Cure; Protection of Security. Beneficiary may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary 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 under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or 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 under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Subsection 6.3(d) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Subsection 6.3(d) shall be secured by this Deed of Trust.

(e) Uniform Commercial Code and Utah Act Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the Code or an Assignee (as defined therein) under the Utah Act.

(f) Foreclosure; Lawsuits. Trustee shall have the right, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid shall be credited on the Secured Obligations in accordance with *Utah Code Ann. § 57-1-28(1)(b)*. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

(g) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other Loan Document without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary and Trustee, as applicable, shall have the right to pursue all remedies afforded to a beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Beneficiary and/or Trustee, as required by applicable Law, shall have the discretionary right to cause some or all of the 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 and/or Trustee, as required by applicable law, may elect to treat as personal property any Property which is intangible or which can be severed from the Project or Improvements without causing structural damage. If it chooses to do so, Beneficiary and/or Trustee, as required by applicable law, may dispose of any personal property, in any manner permitted by the Code, including any public or private sale, or in any manner permitted by any other applicable Law.

(ii) In connection with any sale or other disposition of such Property, Trustor agrees that the following procedures constitute a commercially reasonable sale: Beneficiary shall mail written notice of the sale to Trustor not later than ten (10) days prior to such sale. Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(iii) It is the express understanding and intent of the parties that as to any personal property interests subject to the Code, Beneficiary, upon an Event of Default, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security as permitted by *Utah Code Ann. § 70A-9a-601* or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Ann. Code § 57-1-30* or other applicable law.

(i) Foreclosure Sale. Beneficiary shall direct Trustee to proceed with foreclosure under the power of sale (a "Foreclosure Sale") which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Trustee may execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with *Utah Code Ann. § 57-1-24* or other applicable law.

(ii) After the lapse of such time as may then be required by *Utah Code Ann. § 57-1-24* or other applicable law following the recordation of the notice of default and election to sell, and notice of default and notice of sale having been given as then required by *Utah Code Ann. § 57-1-25* and *§ 57-1-26* or other applicable law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by Trustee in such notice of sale, either as a whole or in



separate parcels, and in such order as it may determine (but subject to Trustor's statutory right under *Utah Code Ann. § 57-1-27* to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), in accordance with applicable law.

(iii) Trustee, subject to and as provided by applicable law, may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and, from time to time thereafter, may postpone such sale by public announcement at the time fixed by the preceding postponement; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Ann. § 57-1-27*.

(iv) It is intended by each of the foregoing provisions of this Subsection that Trustee may, after any request or direction by Beneficiary, sell not only the Land and the Improvements, but also the Accessories and other interests constituting a part of the Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property as permitted pursuant to applicable law. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(v) After any sale under this Subsection, Trustee shall make good and sufficient deeds, assignments and other conveyances to the purchaser or purchasers as required or permitted by applicable law, including but not limited to *Utah Code Ann. § 57-1-28*. It is agreed that, in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Beneficiary, or as to the occurrence or existence of any Default, or as to the acceleration of the maturity of the Secured Obligations, or as to the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution and application of the money realized therefrom, or as to the due and proper appointment of a substitute trustee, and, without being limited by the foregoing, as to any other act or thing having been duly done by or on behalf of Beneficiary or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that the said statements or recitals state facts and are without further question to be so accepted, and Trustor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

(j) In lieu of Trustee's exercise of the power of sale herein, Beneficiary may cause the lien of the Deed of Trust to be foreclosed judicially as a mortgage under the applicable laws of the State of Utah as permitted pursuant to *Utah Code Ann. § 57-1-23*.

6.4. Credit Bids. At any Foreclosure Sale or sale pursuant to Section 6.3(j) herein, any person, including Trustor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable Law. Furthermore, upon any sale made under or by

virtue of Section 6.3, whether made under the power of sale therein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Beneficiary may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Ann. § 57-1-28(1)(b)*. In the event of a successful credit bid, Beneficiary shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws

6.5. Additional Provisions.

(a) For purposes of *Utah Code Ann. § 57-1-28*, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property, and (ii) Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

(b) Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Ann. § 57-1-32* or other applicable law. Trustor agrees for purposes of *Utah Code Ann. § 57-1-32* that the value of the Property as determined and set forth in an FIRREA appraisal of the Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of *Utah Code Ann. § 57-1-32*.

(c) Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Ann. § 78B-6-901* (formerly *Utah Code Ann. § 78-37-1*) and *Utah Code Ann. § 57-1-32* and any successor or replacement statute or any similar laws or benefits.

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

6.6. Application of Foreclosure Sale Proceeds. Trustee shall apply the proceeds of any Foreclosure Sale in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of exercising the power of sale and of the sale, and then to any other sums

for which Trustor is obligated to reimburse Beneficiary or Trustee under Section 5.9 of this Deed of Trust;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary or Trustee under the terms of this Deed of Trust which then remain unpaid;

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

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it; or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Ann. § 57-1-29*.

## 7. **The Trustee.**

7.1. Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his or her agents or attorneys, (ii) to select and employ, in and about the execution of his or her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iii) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Project for debts contracted for or liability or damages incurred in the management or operation of the Project. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered.

7.2. Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

7.3. Successor Trustees. Trustee may resign by the filing a notice of such resignation in the county where the Property is located as required by *Utah Code Ann. § 57-1-22(5)*. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee,

Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment and substitution shall be accomplished in accordance with *Utah Code Ann. § 57-1-22*. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his or her successor or successors in this trust, shall do lawfully by virtue hereof.

7.4. Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

7.5. Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its, his or her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

7.6. No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

## 8. Miscellaneous Provisions.

8.1. Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property.

### 8.2. No Waiver or Cure.

(a) Each waiver by Beneficiary 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 to take action on account of any default of Trustor. Consent by Beneficiary 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 consent to be obtained in any future or other instance.

(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); or impair the security of this Deed of Trust; or prejudice Beneficiary 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) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(c).

(ii) Beneficiary collects and applies Rents as permitted under Section 2 above, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under Section 5.5 above.

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Beneficiary or Trustee 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.

### 8.3. Powers of Beneficiary.

(a) If Beneficiary performs any act which it is empowered or authorized to perform under this Deed of Trust, including any act permitted by Section 5.7 or Subsection 6.3(d) of this Deed of Trust, 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.

(b) Beneficiary may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(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.

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

8.4. 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.

8.5. 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.

8.6. Applicable Law. This Deed of Trust shall be governed by, and construed in accordance with, the laws of the State of Utah.

8.7. 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 8.7 does not waive the provisions of Section 6.1 above.

8.8. Payment for Labor and Materials; Mechanic's and Materialmen's Liens.

(a) Trustor will promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.

(b) Trustor will timely comply with all requirements of *Title 38 Chapter 1a of Utah Code Ann.* with regard to filings and notices. Trustor will cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with *Utah Code Ann. § 38-1a-201*. Trustor will also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor.

(c) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in

any form prior to the date hereof with respect to the Property or recorded against the Property.

(d) If Beneficiary or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor will provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to *Utah Code Ann. § 38-1a-503(2)(b)* such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Security Instrument.

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

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

(g) Trustor will pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings or improvements now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor will have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Ann. § 38-1a-804* and otherwise complies with the requirements of *Utah Code Ann. § 38-1a-804* to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Ann. § 38-1a-804(7)* without previously recording a notice of release of lien and substitution of alternate security or (B) to the extent if any expressly permitted by the Loan Agreement,

appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(h) If Trustor fails to remove and discharge any such lien, encumbrance or charge, or if Trustor disputes the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but will not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Ann. § 38-1a-804* or other applicable law, or otherwise by giving security for such claim. Trustor will, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

#### 8.9. Water Rights.

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

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

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

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

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



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

8.10. Environmental Obligations. Notwithstanding anything to the contrary herein or in any other Loan Document, any obligations of Trustor under any separate environmental or hazardous materials agreement in favor of Lender with respect to the Property shall not form part of the Secured Obligations and shall not be secured by this Deed of Trust.

8.11. 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) 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.

8.12. Status of Property. For purposes of *Utah Code Ann. § 57-1-25* and *Utah Code Ann. § 78B-6-901.5*, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

8.13. Waiver of Statutory Rights. To the extent permitted by law, Trustor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Trustor hereby waives any and all rights of reinstatement and of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Trustor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust. If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust within three (3) months of the recordation of a notice of default in accordance with *Utah Code Ann. § 57-1-31(1)*, such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Ann. § 57-1-31-(2)*, as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

8.14. 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 shall 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.

8.15. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

If to Trustor:

TPP 217 Taylorsville, LLC  
1717 Main Street, Suite 2600  
Dallas, TX 75201  
Attention: John Mearns  
Telephone: 214-615-3319  
Facsimile: 214-220-2478

With a copy to:

Kane Russell Coleman Logan PC  
1601 Elm Street, Suite 3700  
Dallas, TX 75201  
Attention: Raymond J. Kane  
Telephone: 214-777-4200

Facsimile: 214-777-4299  
Email: rkane@krcl.com

If to Lender:

NexBank SSB  
6121 Luther Lane  
Dallas, Texas 75225  
Attention: Wayne Spencer  
Telephone: 214-234-7281

With a copy to:

Wick Phillips Gould & Martin, LLP  
3131 McKinney Avenue, Suite 100  
Dallas, Texas 75204  
Attention: Michael Bailey  
Telephone: 214-750-4058  
Facsimile: 214-692-6255  
Email: michael.bailey@wickphillips.com

If to Trustee:

John Holt  
2515 McKinney Avenue, Suite 1100  
Dallas, Texas 75201

With a copy to:

Wick Phillips Gould & Martin, LLP  
3131 McKinney Avenue, Suite 100  
Dallas, Texas 75204  
Attention: Michael Bailey  
Telephone: 214-750-4058  
Facsimile: 214-692-6255  
Email: michael.bailey@wickphillips.com

Any notice or demand delivered to the person or entity named above to accept notices and demands for Trustor shall constitute notice or demand duly delivered to Trustor, even if delivery is refused.

8.16. Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time as a result of future advances. This Deed of Trust shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by Law.

8.17. Intentionally deleted.

8.18. WAIVER OF TRIAL BY JURY. TRUSTOR, TRUSTEE, AND BENEFICIARY EACH WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

8.19. Inconsistencies. In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

8.20. Controlling Agreement. It is the intent of Trustor and Beneficiary to conform to and contract in strict compliance with applicable usury law from time to time in effect. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the rate of interest taken, reserved, contracted for, charged or received under this Deed of Trust and the other Loan Documents exceed the highest lawful interest rate permitted under applicable law. If Beneficiary shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the highest lawful interest rate permitted under applicable law, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Loan in the inverse order of its maturity and not to the payment of interest, or refunded to the Trustor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. All interest paid or agreed to be paid to the holder hereof shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of the Loan so that the amount of interest on account of such obligation does not exceed the maximum permitted by applicable law. As used in this Section, the term "applicable law" shall mean the laws of the State of Texas or the federal laws of the United States, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

8.21. THIS WRITTEN DEED OF TRUST REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by the Trustor and Beneficiary.

[Signature page follows.]

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

**TRUSTOR:**

TPP 217 TAYLORSVILLE, LLC,  
a Delaware limited liability company

By: *John Mearns*  
Name: John Mearns  
Title: Vice President

STATE OF TEXAS            )  
  )  
COUNTY OF Dallas        )        SS:

The foregoing instrument was acknowledged before me this 20th day of Sept, 2018, by John Mearns, the Vice President of TPP 217 TAYLORSVILLE, LLC, a Delaware limited liability company, on behalf of said limited liability company. He/She is personally known to me or has produced a State of TEXAS driver's license as identification.

Sign Name: *Judith E. Champion*  
Notary Public

Print Name: Judith E. Champion

Serial No. (if any): Notary ID # 0245164

[NOTARIAL SEAL]

My Commission Expires: 9/26/2021

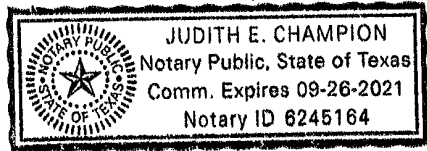


EXHIBIT A

*Description of Land*

PARCEL 1:

MIDVALLEY SOUTH PHASE:

BEGINNING AT A POINT ON THE WEST RIGHT OF WAY LINE OF REDWOOD ROAD, SAID POINT BEING NORTH 00°02'55" WEST 247.50 FEET ALONG CENTER OF SECTION LINE AND SOUTH 89°56'25" WEST 53.00 FEET FROM THE CENTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00°02'55" WEST 995.739 FEET ALONG SAID WEST RIGHT OF WAY LINE OF REDWOOD ROAD; THENCE SOUTH 89°55'04" WEST 1123.00 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF 5600 SOUTH STREET; THENCE SOUTH 00°02'55" EAST 474.57 FEET ALONG THE EAST RIGHT OF WAY LINE OF 1900 WEST STREET; THENCE SOUTH 89°56'25" WEST 45.00 FEET; THENCE SOUTH 00°02'55" EAST 338.23 FEET; THENCE SOUTH 89°56'25" WEST 477.25 FEET; THENCE SOUTH 00°02'55" EAST 430.00 FEET TO THE CENTER OF SECTION LINE OF SAID SECTION 15; THENCE SOUTH 89°56'25" WEST 40.82 FEET ALONG SAID CENTERLINE OF SECTION TO THE NORTHERLY RIGHT OF WAY LINE OF THE I-215 FREEWAY; THENCE SOUTH 67°15'40" EAST 138.90 FEET ALONG SAID I-215 RIGHT OF WAY LINE; THENCE SOUTH 76°43'15" EAST 375.07 FEET CONTINUING ALONG SAID I-215 RIGHT OF WAY LINE; THENCE SOUTHEASTERLY 326.07 FEET CONTINUING ALONG SAID I-215 RIGHT OF WAY LINE AND A 1045.92 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTH 84°06'21" EAST 873.31 FEET CONTINUING ALONG SAID I-215 RIGHT OF WAY LINE TO SAID WEST RIGHT OF WAY LINE OF REDWOOD ROAD; THENCE NORTH 00°02'55" WEST 316.62 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

MIDVALLEY NORTH PHASE:

BEGINNING AT A POINT ON THE SOUTH LINE OF 5400 SOUTH STREET, SAID POINT BEING SOUTH 89°53'41" WEST 660.00 FEET AND SOUTH 00°02'55" EAST 39.017 FEET FROM THE NORTH QUARTER CORNER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00°02'55" EAST 620.983 FEET; THENCE NORTH 89°53'41" EAST 406.50 FEET; THENCE SOUTH 00°02'55" EAST 114.00 FEET; THENCE NORTH 89°53'41" EAST 200.50 FEET TO THE WEST LINE OF REDWOOD ROAD; THENCE SOUTH 00°02'55" EAST 553.239 FEET ALONG THE WEST LINE OF REDWOOD ROAD TO THE NORTH LINE OF 5600 SOUTH STREET; THENCE SOUTH 89°55'04" WEST 1123.00 FEET ALONG THE NORTH LINE OF 5600 SOUTH STREET TO THE EAST LINE OF 1900 WEST STREET; THENCE ALONG THE EAST LINE OF 1900 WEST STREET THE NEXT 6 COURSES AND DISTANCES: NORTH 00°02'55" WEST 327.38 FEET; THENCE NORTHEASTERLY 163.04 FEET ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT, (CHORD BEARS NORTH 09°17'35" EAST 162.32 FEET); THENCE NORTHEASTERLY 184.19 FEET ALONG THE ARC OF A 566.00 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 09°18'43" EAST 183.38 FEET); THENCE NORTH 00°00'39" WEST 480.36 FEET; THENCE NORTH 04°04'27" EAST 70.18 FEET; THENCE NORTH 00°00'39" WEST 55.95 FEET TO THE SOUTH LINE OF 5400 SOUTH STREET; THENCE ALONG THE SOUTH LINE OF 5400 SOUTH STREET THE NEXT 3 COURSES AND DISTANCES: NORTHEASTERLY 253.94 FEET ALONG THE ARC OF AN 11,512.16 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 88°31'35" EAST 253.94 FEET); THENCE NORTH 87°53'41" EAST 173.03 FEET; THENCE NORTHEASTERLY 27.649 FEET ALONG THE ARC OF AN 11,406.16 FOOT RADIUS CURVE TO THE RIGHT, (CHORD BEARS NORTH 87°57'51" EAST 27.648 FEET), TO THE POINT OF BEGINNING.

PARCEL 3:

MIDVALLEY NORTH PHASE (WEST PART):

BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF 5400 SOUTH STREET AND WEST RIGHT OF WAY LINE OF 1900 WEST STREET, SAID POINT BEING SOUTH 89°53'41" WEST 1185.39 FEET ALONG SECTION LINE AND SOUTH 00°00'39" EAST 65.832 FEET FROM THE NORTH QUARTER CORNER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE ALONG SAID WEST RIGHT OF WAY LINE 1900 WEST STREET THE NEXT FOUR COURSES AND DISTANCES: SOUTH 00°00'39" EAST 592.42 FEET; THENCE SOUTHWESTERLY 162.71 FEET, ALONG THE ARC OF A 500 FOOT RADIUS CURVE TO THE RIGHT, (CHORD = SOUTH 9°18'43" WEST 161.997 FEET), TO A POINT OF REVERSE CURVE; THENCE SOUTHWESTERLY 184.56 FEET, ALONG THE ARC OF A 566 FOOT RADIUS CURVE TO THE LEFT, (CHORD = SOUTH 9°17'38" WEST 183.744 FEET); THENCE SOUTH 00°02'55" EAST 404.84 FEET; THENCE SOUTH 89°56'22" WEST 82.94 FEET; THENCE NORTH 00°04'29" WEST 1351.11 FEET, TO AND ALONG THE EAST LINE OF HEW-WOOD ESTATES NO. 2 AND NO. 1 SUBDIVISIONS, SAID SUBDIVISIONS BEING RECORDED AND ON FILE IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, TO SAID SOUTH RIGHT OF WAY LINE OF 5400 SOUTH STREET; THENCE NORTH 89°53'41" EAST 64.10 FEET, ALONG SAID SOUTH RIGHT OF WAY LINE; THENCE NORTHEASTERLY 62.95 FEET, ALONG THE ARC OF A 11,512.16 FOOT RADIUS CURVE TO THE LEFT, AND CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE; THENCE SOUTH 45°13'56" EAST 18.43 FEET, CONTINUING ALONG SAID SOUTH RIGHT OF WAY LINE, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT AS SET FORTH IN RECIPROCAL DECLARATION OF COVENANT, AND THE TERMS AND CONDITIONS THEREIN, BY AND BETWEEN HARMON CITY, INC., A UTAH CORPORATION AND HERMES ASSOCIATES, LTD., A UTAH LIMITED PARTNERSHIP, RECORDED JUNE 17, 1992, AS ENTRY NO. 5275382, IN BOOK 6472, AT PAGE 1013 OF OFFICIAL RECORDS.

PARCEL 5:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING OVER AND UPON PARKING AND COMMON AREAS AS PROVIDED FOR IN:

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, RECORDED JUNE 30, 1981, AS ENTRY NO. 3580638, IN BOOK 5265, AT PAGE 1688; BY ADDENDUM TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, AND THE TERMS AND CONDITIONS THEREOF, RECORDED SEPTEMBER 25, 1981, AS ENTRY NO. 3608494, IN BOOK 5296 AT PAGE 434;

ADDENDUM TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, AND THE TERMS AND CONDITIONS THEREOF, RECORDED DECEMBER 30, 1985, AS ENTRY NO. 4182363, IN BOOK 5722 AT PAGE 924; ADDENDUM TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, AND THE TERMS AND CONDITIONS THEREOF, RECORDED JANUARY 15, 1986, AS ENTRY NO. 4189540, IN BOOK 5727 AT PAGE 2985; AMENDED DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, AND THE TERMS AND CONDITIONS THEREOF, RECORDED MARCH 12, 1987, AS ENTRY NO. 4243664, IN BOOK 5765 AT PAGE 2527; AND

THIRD AMENDED DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, AND THE TERMS AND CONDITIONS THEREOF, RECORDED MARCH 01, 1987, AS ENTRY NO. 4448700, IN BOOK 5912 AT PAGE 376; ALL OF OFFICIAL RECORDS.

PARCEL 6:

NON-EXCLUSIVE ACCESS EASEMENT(S) AS PROVIDED IN THE FOLLOWING:

A) ACCESS EASEMENT AGREEMENT, DATED AUGUST 03, 2004, BY AND BETWEEN DDR FAMILY CENTERS LP, A DELAWARE LIMITED PARTNERSHIP AND HARDY REDWOOD CENTER, LLC, A UTAH LIMITED LIABILITY COMPANY, DBA SHOPS ON REDWOOD, RECORDED AUGUST 18, 2004, AS ENTRY NO. 9149644, IN BOOK 9027, AT PAGE 1254, OF OFFICIAL RECORDS.

B) ACCESS EASEMENT AGREEMENT, DATED AUGUST 03, 2004, BY AND BETWEEN DDR FAMILY CENTERS LP, A DELAWARE LIMITED PARTNERSHIP AND HARDY REDWOOD CENTER, LLC, A UTAH LIMITED LIABILITY COMPANY, DBA SHOPS ON REDWOOD, RECORDED AUGUST 18, 2004, AS ENTRY NO. 9149645, IN BOOK 9027, AT PAGE 1268, OF OFFICIAL RECORDS.

C) AMENDED AND RESTATED ACCESS EASEMENT AGREEMENT, DATED FEBRUARY 23, 2005, BY AND BETWEEN DDR FAMILY CENTERS LP, A DELAWARE LIMITED PARTNERSHIP; HERMES ASSOCIATES, LTD., A UTAH LIMITED PARTNERSHIP; AND HARDY REDWOOD CENTER, LLC, A UTAH LIMITED LIABILITY COMPANY, DBA SHOPS ON REDWOOD, RECORDED APRIL 12, 2005, AS ENTRY NO. 9346731, IN BOOK 9117, AT PAGE 945, OF OFFICIAL RECORDS.

D) AMENDED AND RESTATED ACCESS EASEMENT AGREEMENT, DATED FEBRUARY 23, 2005, BY AND BETWEEN DDR FAMILY CENTERS LP, A DELAWARE LIMITED PARTNERSHIP; HERMES ASSOCIATES, LTD., A UTAH LIMITED PARTNERSHIP; AND HARDY REDWOOD CENTER, LLC, A UTAH LIMITED LIABILITY COMPANY, DBA SHOPS ON REDWOOD, RECORDED APRIL 12, 2005, AS ENTRY NO. 9346732, IN BOOK 9117, AT PAGE 963, OF OFFICIAL RECORDS.

PARCEL 7:

NON-EXCLUSIVE ACCESS EASEMENT(S) FOR INGRESS, EGRESS AND PARKING UPON THE PARKING AND COMMON AREAS AS PROVIDED IN THE FOLLOWING:

A) DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, RECORDED FEBRUARY 14, 1985 AS ENTRY NO. 4050701 IN BOOK 5629 AT PAGE 2212, OF OFFICIAL RECORDS.

B) DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, AND THE TERMS AND CONDITIONS THEREOF, RECORDED JULY 22, 1986, AS ENTRY NO. 4282574, IN BOOK 5793 AT PAGE 1801, OF OFFICIAL RECORDS.

C) ADDENDUM TO DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS, AND THE TERMS AND CONDITIONS THEREOF, RECORDED JANUARY 17, 1992, AS ENTRY NO. 5184473, IN BOOK 6399 AT PAGE 677, OF OFFICIAL RECORDS.

PARCEL 8:

NON-EXCLUSIVE DRIVEWAY EASEMENT AS PROVIDED IN THE FOLLOWING:

EASEMENT AGREEMENT DATED SEPTEMBER 17, 1981 AND RECORDED DECEMBER 30, 1981 IN ENTRY NO. 3635435, IN BOOK 5327, PAGE 83 OF THE OFFICIAL RECORDS.



PARCEL 9:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING OVER AND UPON COMMON AREAS AS PROVIDED FOR IN:

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE CROSSROADS AT TAYLORSVILLE (NORTH PHASE), RECORDED AUGUST 10, 2018, AS 12827199, IN BOOK 10701, AT PAGE 6974 OF OFFICIAL RECORDS.

PARCEL 10:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING OVER AND UPON COMMON AREAS AS PROVIDED FOR IN:

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE CROSSROADS AT TAYLORSVILLE (SOUTH PHASE), RECORDED AUGUST 10, 2018, AS 12827200, IN BOOK 10701, AT PAGE 7030 OF OFFICIAL RECORDS.

PARCEL 11:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING OVER AND UPON COMMON AREAS AS PROVIDED FOR IN:

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR THE CROSSROADS AT TAYLORSVILLE (WEST PHASE) , RECORDED AUGUST 10, 2018, AS 12827201, IN BOOK 10701, AT PAGE 7091 OF OFFICIAL RECORDS.