

WHEN RECORDED MAIL TO:

Redevelopment Agency of Salt Lake  
451 South State Street, Room 118  
PO Box 145518  
Salt Lake City, UT 84114-5518

File No.: 116413-DMY

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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 18 P.

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

In Reference to Tax ID Number(s):

15-01-151-019

WHEN RECORDED, RETURN TO:  
Redevelopment Agency of Salt Lake  
451 South State, Room 118  
PO Box 145518  
Salt Lake City, Utah 84114-5518

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

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (together with all amendments and supplements, this "Deed of Trust") is made as of ~~October~~<sup>November 7</sup>, 2019, from CENTRAL STATION APARTMENTS, LLC, a Utah limited liability company, whose address is 423 West 300 South, Suite 230, Salt Lake City, Utah 84101 ("Trustor"), to KIMBERLY K CHYTRAUS, whose address is 451 South State, Suite 505A, Salt Lake City, Utah 84111 ("Trustee") and REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public entity, whose address is 451 South State, Room 118, Salt Lake City, Utah 84111, its successors and assigns ("Beneficiary").

**1. GRANTING CLAUSE.**

1.1 Trustor hereby CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE the property situated in Salt Lake County, Utah, being more particularly described on Exhibit A, attached hereto and incorporated herein by reference.

1.2 TOGETHER WITH all the right, title, and interest of Trustor in and to all buildings and improvements now located or hereafter to be erected or placed upon any real property which, or upon any real property an interest in which, is now or hereafter subject to the lien of this Deed of Trust (all hereinafter referred to as the "Improvements"), and all right, title, and interest of Trustor, now owned or hereafter acquired, in and to any and all strips and gores of land, and in, to, and under the land within the streets, sidewalks, and alleys, adjoining such real property, and in and to all and singular the tenements, hereditaments, privileges, easements, franchises, rights, appendages, and appurtenances belonging or in any way appertaining to all such real property.

1.3 TOGETHER WITH all the right, title, and interest of Trustor in and to all machinery, apparatus, equipment, fittings, and fixtures of every kind and nature whatsoever, all furniture, furnishings, and other personal property now or at any time hereafter attached to or used in any way in connection with the use, operation, and occupation of the Improvements or any part thereof, including, but not limiting the generality of the foregoing, all engines, furnaces, boilers, stokers, pumps, heaters, tanks, dynamos, motors, generators, fans, blowers, vents, switchboards, electrical equipment, telephone equipment, heating, plumbing, lifting, and ventilating apparatus, air-cooling and air-conditioning apparatus, gas and electric fixtures, elevators, escalators, compressors, vacuum cleaning systems, call systems, water fountains, refrigeration equipment, fire prevention and extinguishing apparatus (or any other safety equipment required by governmental regulation), electric signs, shades, venetian blinds, awnings, screens, partitions, drapes, carpeting, and maintenance equipment of every nature whatsoever, including machinery and equipment for the removal of snow

and general maintenance. (All of the equipment described in this Section 1.3 is hereinafter referred to as the "Equipment").

1.4 TOGETHER WITH all the right, title, and interest of Trustor in and to all accounts, contract rights, rents, issues, royalties, profits, revenues, incomes, proceeds, and other benefits of and from the property described above and property subject or required to be subject to the lien of this Deed of Trust, and any and all bank accounts and similar accounts containing any of the foregoing, and all of the estate, right, title, and interest of every nature whatsoever of Trustor in and to the same and every part and parcel thereof.

1.5 TOGETHER WITH all the right, title, and interest of Trustor in and to any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the property described above as a result of: (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to or decrease in the value of the property described above, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by Beneficiary, and of the reasonable attorneys' fees, costs, and disbursements incurred by Beneficiary in connection with the collection of such award or payment, and Trustor agrees to execute and deliver from time to time such further instruments as may be requested by Beneficiary to confirm such assignment to Beneficiary of any such award or payment.

1.6 TOGETHER WITH all the right, title, and interest of Trustor in and to all existing and future goods located on the real property which are now or in the future owned by Trustor and used in the operation or occupancy of the real property or in any construction on the real property but which are not effectively made real property under Section 1.3 above, including but not limited to all appliances, furniture, furnishings, carpeting, draperies, building service equipment, building materials, supplies, and equipment.

1.7 TOGETHER WITH all the right, title, and interest of Trustor in and to all existing and future general intangibles relating to the development or use of the real property or the Improvements, including but not limited to all governmental permits relating to construction on the real property, all existing and future names under or by which the real property or the building may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future trademarks and good will in any way relating to the property.

1.8 TOGETHER WITH all the right, title, and interest of Trustor in and to all existing and future water or water rights, ditch or ditch rights, and reservoir or reservoir rights which are appurtenant to or which have been used in connection with the real property, all existing and future water stock relating to the real property, all existing and future shares of stock or other evidence of ownership of any part of the real property that is owned by Trustor in common with others, and all existing and future documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the real property.

1.9 TOGETHER WITH any security deposits, and any and all other amounts held as security under any lease or leases or sublease or subleases or other occupancy agreements now or hereafter outstanding on the Property (the "Leases").

1.10 TOGETHER WITH all and singular the privileges and appurtenances thereunto belonging, (the real property, Improvements, Equipment, interests, privileges, and appurtenances described in Sections 1.1 through 1.10 hereof being hereinafter referred to as the "Property" and all such Property constituting personal property subject to Article 9a of the Uniform Commercial Code as enacted in Utah being referred to hereinafter as the "Personal Property"), it being the intention of Trustor that so far as may be permitted by law, all property, interests and rights of the character described in this Section 1 which is now owned or held or is hereafter acquired by Trustor and is affixed, attached, annexed to or placed upon any Property shall be and remain or become and constitute a portion of the security covered by and subject to the lien hereof and TRUSTOR WARRANTS THE TITLE TO THE SAME, subject only to those exceptions, encumbrances, and defects are approved in writing by Beneficiary (collectively, the "Permitted Exceptions").

TO HAVE AND TO HOLD the same IN TRUST, WITH POWER OF SALE, however, for the purpose of securing:

I. The payment of all indebtedness owing from Trustor to Beneficiary, including but not limited to a certain secured promissory note dated of substantially even date herewith, for the principal sum of **\$1,000,000.00** made by Trustor and payable to the order of Beneficiary (the "Note"), as the Note may be amended, modified, restated, or replaced from time to time;

II. The performance of all obligations of Trustor under the Note, the Construction Loan Agreement dated of even date herewith between Beneficiary and Trustor (the "Loan Agreement"), this Deed of Trust and all loan agreements and loan documents (collectively, as the same may be amended, modified, supplemented and/or replaced, from time to time, the "Loan Documents") executed in connection with the Note and this Deed of Trust and each other agreement herein contained or referred to herein between Trustor and Beneficiary;

III. The payment of all sums expended or advanced by Beneficiary pursuant to the terms hereof. (The principal and interest on the Note, and advances made by Beneficiary pursuant to the terms of this Deed of Trust or any other instrument now in existence or hereafter executed or any amendment or modification thereto, the purpose of which is to secure the payment of the Note, are hereinafter referred to as the "Indebtedness");

IV. The performance of each covenant and agreement of Trustor contained herein and in any modification or amendment of this Deed of Trust.

## **2. COVENANTS.**

2.1 **Repayment of Indebtedness.** Trustor covenants and agrees to pay promptly the principal of and interest on the Indebtedness, to pay promptly all other sums due pursuant hereto, and to perform each and every agreement and condition contained in the Note, this Deed of Trust, and all other Loan Documents.

### **2.2 Condemnation and Insurance Proceeds.**

(a) Trustor hereby assigns to Beneficiary all of the right, title, and interest which Trustor has or may have in and to (collectively, the "Claims") (1) the proceeds of any

award or claim for damages, direct, consequential or of whatever nature, including without limitation from insurance policies, in connection with any condemnation or other taking of or damage or injury to the Project, or any part thereof, including any award or awards for any change or changes of grade or route of streets affecting the Project, or for conveyance in lieu of condemnation; and (2) all causes of action, whether accrued before or after the date of this Agreement, of all types for damages or injury to or otherwise in connection with all or any part of the Project, or in connection with any transaction financed by funds loaned to Trustor by Beneficiary and secured by any Loan Document, including without limitation causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact. Any such proceeds assigned to Beneficiary shall be paid directly to Beneficiary. Beneficiary may at its option appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement thereof, and may join Trustor in adjusting any loss covered by insurance.

(b) **Application of Proceeds; No Default.** So long as no Default has occurred and is continuing at the time of Beneficiary's receipt of the proceeds of the Claims ("Proceeds") and no Default occurs thereafter, Beneficiary shall apply the Proceeds in the following order of priority: First, to any expenses incurred by Beneficiary in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Trustor if the repair or restoration of the Property has been completed, but to the Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Beneficiary shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied: (i) delivery to Beneficiary of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary; (iii) delivery to Beneficiary in form and content acceptable to Beneficiary of all of the following: (a) plans and specifications for the work; (b) a contract for the work, signed by a contractor acceptable to Beneficiary; (c) a cost breakdown for the work; (d) if required by Beneficiary, a payment and performance bond for the work; (e) evidence of the continuation of all Leases, if any unless consented to in writing by Beneficiary; (f) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (g) evidence of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect Beneficiary's security. Trustor acknowledges that the specific conditions described above are reasonable.

(c) **Application of Proceeds; Default.** If a Default has occurred and is continuing at the time of Beneficiary's receipt of the Proceeds or if a Default occurs at any time thereafter, Beneficiary may, at Beneficiary's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Beneficiary's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Obligations in any order without suspending, extending or reducing any obligation of Trustor

to make installment payments, and may release all or any part of the Proceeds to Trustor upon any conditions Beneficiary chooses.

**2.3 Use of the Property.** Trustor shall use the Property, or cause it to be used, for any purpose permitted by zoning and other applicable ordinances. Trustor shall not use or permit the use of the Property for any purpose not so permitted.

**2.4 Payment of Taxes and Assessments.** Trustor covenants and agrees to pay or cause the Board of Managers for the condominium in which the Property is located (the "Board") to pay before they become delinquent all taxes, special assessments, water and sewer rents or assessments, and all other charges imposed by law upon or against the Property, ordinary and extraordinary, unforeseen and foreseen (the "Impositions"). Trustor shall deliver to Beneficiary evidence of payment of Impositions and insurance premiums within thirty (30) days after such payment is made. Such evidence shall be in the form of the original or a photostatic copy of the official receipt evidencing such payment or other proof of payment satisfactory to Beneficiary. The failure of Trustor to deliver to Beneficiary such receipts or to submit other satisfactory proof of such payment to Beneficiary shall constitute a Default.

**2.5 Preservation of Lien Priority by Trustor.**

(a) The lien of this Deed of Trust is and will be maintained as a valid lien on the Property subordinate only to the Permitted Exceptions. Trustor will keep and maintain the Property free from all liens of persons supplying labor and materials entering into the construction, modification, or repair of the Improvements and obtain bonds or other security required by Beneficiary in this respect. If any such lien is recorded against the Property, Trustor shall post a bond, as provided by statute, or discharge the same of record within thirty (30) days after Trustor becomes aware that such lien is recorded. Without the prior consent of Beneficiary, Trustor shall not do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which or the omission of which would impair the security of this Deed of Trust or would constitute grounds for the termination by any lessee or sublessee of the Leases.

(b) All property of every kind acquired by Trustor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Deed of Trust shall, immediately upon its acquisition and without any further conveyance, assignment, or transfer, become subject to the lien of this Deed of Trust. Nevertheless, Trustor will do all such further acts, and execute, acknowledge, and deliver all such further conveyances, mortgages, security agreements, and assurances as Beneficiary may reasonably require in order to confirm the lien of this Deed of Trust on the Property, the Improvements, and any Equipment, and Trustor shall pay all costs in connection therewith, including but not limited to Beneficiary's reasonable attorneys' fees and fees for filing or recording such instruments.

(c) If any action or proceeding is instituted to evict Trustor or to recover possession of the Property or for any other purpose affecting this Deed of Trust or the lien of this Deed of Trust, Trustor shall deliver to Beneficiary a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings,

and papers, however designated, served or received in such action or proceedings, promptly after Trustor receives them.

2.6 **Licenses.** Trustor shall keep in full force and effect all licenses, permits, authorizations, rights and franchises necessary to operate its respective businesses or in connection with the Property and shall not engage in any action or do anything which would impair any such license, permit, authorization, right, or franchise. Trustor shall promptly advise Beneficiary of any order, application, suit, hearing, or proceeding which might affect Trustor's rights in any respect in any license, permit authorization, right or franchise now or hereafter held by Trustor.

2.7 **Deed of Trust as Construction Mortgage, Security Agreement and Fixture Filing.**

(a) Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the obligations secured by this Deed of Trust, in all of the Personal Property, and all articles of personal property and all materials delivered to the Property for incorporation or use in any construction being conducted thereon and owned by Trustor (which to the fullest extent permitted by law shall be deemed fixtures and a part of the real property) (collectively, the "Collateral"). The foregoing security interest shall be second in priority to the Senior Loan (as defined in the Loan Agreement). With respect to the Collateral, this Deed of Trust constitutes a security agreement, and with respect to any property described herein that constitutes "fixtures" as such term is defined in the UCC, this Deed of Trust also constitutes a fixture filing and is intended when recorded to create a perfected security interest in such property in favor of Beneficiary. This Deed of Trust shall be self-operative with respect to all such Collateral and fixtures, but Trustor agrees to execute and deliver on demand such security agreements, financing statements, and other instruments as Beneficiary may request in order to impose the lien hereof more specifically upon any of such property and to pay all costs in connection therewith, including but not limited to Beneficiary's reasonable attorneys' fees and all recording and/or filing fees associated therewith. If the lien of this Deed of Trust on any property is subject to a prior security agreement covering such property, then if any Default occurs, Trustor hereby assigns to Beneficiary all its right, title, and interest in and to all deposits thereon, together with the benefit of any payments now or hereafter made thereon. For purposes of treating this Deed of Trust as a security agreement and financing statement, Beneficiary shall be deemed to be the secured party and Trustor shall be deemed to be the debtor.

(b) This Deed of Trust constitutes a "construction mortgage" under the UCC.

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

Beneficiary shall make an express written election of said remedy under UCC Section 70A-9a-620, or other applicable law.

**2.8 Further Encumbrance or Sale.**

(a) Except as may be permitted under any other Loan Document, without the prior written consent of Beneficiary, which Beneficiary may withhold in its reasonable discretion, Trustor shall not execute or deliver any pledge, security agreement, mortgage, deed of trust or other instrument of hypothecation, covering all or any portion of the Property nor sell, contract to sell, lease with option to purchase, convey, alienate, transfer or otherwise dispose of the Property, whether voluntarily or involuntarily, by operation of law or otherwise, and any act in contravention hereof shall constitute a Default (without notice or passage of time). Trustor shall reimburse Beneficiary for all costs and expenses, including without limitation reasonable attorneys' fees, incurred by Beneficiary in connection with its review of Trustor's request for Beneficiary's consent to such a sale or other transfer pursuant to this Section.

(b) If any of the events described in subsection (a) above occur without the prior written consent of Beneficiary as provided in this Section, then the full principal of the Note, the total Indebtedness and all obligations secured by this Deed of Trust, irrespective of the maturity date expressed therein, at the option of Beneficiary, and without demand or notice, shall immediately become due and payable.

**2.9 Maintenance of Property.** Trustor will not commit any waste on the Property or take any actions that might invalidate any insurance carried on the Property. Trustor in the use and operation of the Property shall comply with all covenants and conditions, restrictions, agreements or other matters affecting the Property. Trustor shall not bring or keep any article on the Property or cause or permit any condition to exist on the Property which is prohibited by or could invalidate any insurance coverage maintained, or required hereunder to be maintained, with respect to all or any part of the Property. Trustor shall do all acts which from the character or use of the Property may be reasonably necessary to protect the security of this Deed of Trust and not specifically set forth herein.

**2.10 Protection of Security; Costs and Expenses.** At any time and from time to time, Trustor will execute and deliver all such further documents and do all such other acts and things as Beneficiary may reasonably request in writing in order to protect the security and priority of the lien created hereby. If Trustor fails to perform any of the covenants or agreements contained in this Deed of Trust, or if any action or proceeding is commenced which affects Beneficiary's interest in the Property or any part thereof, including, but not limited to, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal, state or local law or regulation, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Beneficiary may, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, make such appearances, disburse such sums and take such action as Beneficiary deems necessary or appropriate to protect Beneficiary's interest, including, but not limited to, disbursement of reasonable attorneys' fees, enter upon the Property to make repairs or take other action to protect the security hereof. Trustor further agrees to pay all reasonable expenses of Beneficiary (including fees and disbursements of counsel) incident of the protection of the rights of



Beneficiary hereunder, or to enforcement or collection of payment of the Indebtedness, whether by judicial or nonjudicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Trustor, or otherwise. Any amounts disbursed by Beneficiary pursuant to this Section shall be part of the Indebtedness and secured by this Deed of Trust and shall bear interest at the interest rate stated in the Note. Trustor shall pay all such amounts immediately without demand. Nothing contained in this Section shall be construed to require Beneficiary to incur any expense, make any appearance, or take any other action.

2.11 **Notify Beneficiary of Default.** Trustor shall notify Beneficiary in writing within five (5) days of the occurrence of any Default or other event which, upon the giving of notice or the passage of time or both, would constitute a Default.

2.12 **Compliance with Laws.** Trustor will comply promptly with all present and future laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, and officers, any national or local Board of Fire Underwriters, or any other body exercising similar functions, foreseen or unforeseen, ordinary or extraordinary, which may be applicable to Trustor, the Indebtedness, the Property, the landscaping, sidewalks, curbs, and vaults adjoining the Property, or to the use or manner of use of the Property whether or not such law, statute, ordinance, order, rule, regulation, restriction, or requirement necessitates structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural, or otherwise, onto or over the streets adjacent to the Property, or onto or over property contiguous or adjacent thereto, and including without limitation, all zoning, building code, environmental protection and equal employment opportunity laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements.

2.13 **Beneficiary's Right to Cure Trustor's Default.** If Trustor fails to pay or cause the Board to pay any sum due hereunder prior to delinquency, whether for taxes, insurance premiums, or other charges, Beneficiary may elect, but shall not be obligated, to pay all or part of such items. Trustor agrees to repay immediately upon demand all funds so advanced by Beneficiary with interest thereon from the date of such payments until repaid at the default interest rate stated in the Note, and all of such advances and the interest thereon shall become part of the Indebtedness and shall be secured by this Deed of Trust.

2.14 **Information to be Supplied by Trustor to Beneficiary.** Trustor will deliver to Beneficiary:

(a) Within three (3) days after Beneficiary's request in person or five (5) days after Beneficiary's request by mail, a written statement in recordable form executed by Trustor, setting forth the amount then secured by this Deed of Trust and whether any offsets or defenses exist against the Indebtedness and if any offsets or defenses are alleged to exist, specifying the nature of such alleged offsets or defenses and, as to such other matters relating to the Indebtedness as Beneficiary may reasonably require; and

(b) Within a reasonable time after Beneficiary's request (but in no event longer than thirty (30) days), such other information with respect to the Property as Beneficiary reasonably requests from time to time.

2.15 **Zoning and Private Covenants.** Trustor will not initiate, join in, or consent to any change in any zoning ordinance or classification, any private restrictive covenant, or any other public or private restriction limiting or defining the uses of all or any part of the Property without Beneficiary's prior written consent. If the use of all or any part of the Property is or becomes a nonconforming use under applicable zoning provisions, Trustor will not cause or permit such use to be discontinued or abandoned without Beneficiary's prior written consent.

2.16 **Cross Default Effect of Other Security Instruments.** If the Indebtedness is now or hereafter further secured by assignments of Trustor's interest in leases, conditional assignments of rents, security agreements, financing statements, deeds of trust, collateral assignments, pledges, contracts of guarantee, or other additional securities, any default under the provisions of any such further security or any other obligation owing from Trustor to Beneficiary, or from Trustor to any other person and secured by the Property, shall be a Default under this Deed of Trust. Beneficiary may, at its option, exhaust any one or more of such securities as well as security hereunder, either concurrently or independently and in such order as it may determine, and may apply the proceeds to the Indebtedness without waiving or affecting the status of any breach or default of any right or power, whether contained herein or exercised hereunder or whether contained or exercised under any other security.

2.17 **Non-Discrimination.** Trustor and all tenants, subtenants, licensees, contractors, agents and employees of Trustor will not discriminate against or with respect to any person or group of persons on the basis of race, color, creed, sex, marital status, age, religion, disability or national origin in the construction, sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any of the Improvements erected or to be erected thereon, or any part thereof. Neither Trustor, nor any person claiming by, through or under Trustor, shall establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendors on the Property or any Improvements erected or to be erected thereon, or any part thereof. Trustor shall insert similar clauses in all leases, deeds, contracts and other instruments executed in connection with the Property.

### 3. REPRESENTATIONS AND WARRANTIES.

To induce Beneficiary to make the loan secured hereby, Trustor represents and warrants to Beneficiary, in addition to any representations and warranties in the Note or any Loan Documents, that as of the date hereof and throughout the term of the Indebtedness until the Indebtedness is paid in full and all obligations under this Deed of Trust are performed:

3.1 **Liens.** Title to the Property or any part thereof is not subject to any liens, encumbrances or defects of any nature whatsoever, whether or not of record, and whether or not customarily shown on title insurance policies, except the Permitted Exceptions.

3.2 **Other Statements to Beneficiary.** Neither this Deed of Trust, the Note, any Loan Documents, nor any document, agreement, report, schedule, notice or other writing furnished to Beneficiary by or on behalf of Trustor contains any omission or misleading or untrue statement of any fact material to any of the foregoing.

3.3 **No Violation of Agreement by Trustor.** The Note, this Deed of Trust, and the Loan Documents are valid and enforceable obligations of Trustor in accordance with their respective terms. Trustor further covenants and warrants that the Note, this Deed of Trust, and the Loan Documents, and the performance or observance by Trustor of any of the matters or things in the Note, this Deed of Trust, and the other Loan Documents do not provide for or contravene any covenant in any indenture or agreement affecting Trustor.

#### 4. ASSIGNMENT OF RENTS AND LEASES.

As additional security for the payment of the Indebtedness, Trustor hereby presently and unconditionally assigns, transfers, and sets over to Beneficiary, all rents, profits, accounts, issues and income now or hereafter derived from the Property including all earnest money deposits and sales proceeds (the "Rents"). Trustor reserves and Beneficiary grants to Trustor a license to collect the Rents. If a Default occurs, and without regard to the adequacy of its security hereunder and without notice to or demand upon Trustor, Beneficiary shall thereafter have full and complete right and authority to demand, collect, receive, and receipt for the Rents, to take possession of the Property without having a receiver appointed, to rent and manage the Property from time to time, and to apply the net proceeds of the Rents to the Indebtedness until all delinquencies, advances, and the Indebtedness are paid in full or until Beneficiary obtains title to the Property through foreclosure or otherwise. Upon the occurrence of a Default, Beneficiary or the holder of the certificate of purchase (issued by the Trustee after the Trustee's sale) may enforce its rights to the Rents by any appropriate civil suit or proceeding. Beneficiary or the holder of such certificate of purchase shall be entitled as a matter of right to a receiver for the Property without regard to the solvency or insolvency of Trustor or of the then owner of the Property or of the Property's value. Such receiver shall apply the Rents according to the law and the orders and directions of a court of competent jurisdiction. Neither the foregoing assignment of Rents to Beneficiary nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property, unless and until Beneficiary, in person or by agent, obtains title to the Property. The appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, shall not be deemed to make Beneficiary a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property.

#### 5. EVENTS OF DEFAULT AND REMEDIES

5.1 **Default.** An "Event of Default" (as defined in the Loan Agreement) and a default by Trustor under, or the acceleration of payment for any reason, of any other indebtedness secured by the Collateral, shall constitute an event of default under this Deed of Trust (a "Default"). In addition, a Default shall include a default by Trustor under any other instrument as security for the Note.

5.2 **Acceleration; Notice.** Time is of the essence hereof. Upon the occurrence of any Default, at Beneficiary's option and in addition to any other remedy Beneficiary may have under the Note, the Loan Agreement or any other Loan Document or at law or in equity or by statute, Beneficiary may declare all sums secured hereby immediately due and payable and elect to have the

Property sold in the manner provided herein. In the event Beneficiary elects to sell the Property, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Property is located. Beneficiary shall also deposit with Trustee the Note and all documents evidencing expenditures secured by this Deed of Trust.

**5.3 Exercise of Power of Sale.** After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (and Trustor hereby waives the right, on its own behalf and anyone claiming by, through or under Trustor, subject to any statutory right of Trustor, to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than seventy-two hours beyond the day 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. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's reasonable attorney's fees and costs; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the default rate then provided for in the Note (the "Default Rate"); (d) all sums then secured by this Deed of Trust, including interest and principal on the Note; and (e) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Property is located.

**5.4 Surrender of Possession.** Trustor shall surrender possession of the Property to the purchaser immediately after the sale of the Property as provided in Section 5.3 above, in the event such possession has not previously been surrendered by Trustor.

**5.5 UCC Remedies.** Notwithstanding anything to the contrary in Sections 5.3 and 5.4, Beneficiary, with regard to all fixtures, chattels, equipment, inventory, and personal property, conveyed to Trustee pursuant to Section 1 of this Deed of Trust, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Utah Uniform Commercial Code, and any and all rights and remedies available to Beneficiary under any other applicable law. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble such fixtures, chattels, equipment, inventory, and personal property and make them available to Beneficiary at a reasonably convenient place designated by Beneficiary.

5.6 **Foreclosure as a Mortgage.** If a Default occurs, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys fees and costs in such amounts as shall be fixed by the court.

5.7 **Receiver.** If a Default occurs, Beneficiary, as a matter of right and without regard to the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction to appoint a receiver or receivers of the Property (including having itself appointed as receiver), and Trustor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Property or the foreclosure proceeding, unless the receivership is sooner terminated.

5.8 **No Remedy Exclusive.** No remedy conferred upon or reserved to Beneficiary under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust or any other Loan Document, or now or hereafter existing at law or in equity or by statute. No delay or failure to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

5.9 **Rights Upon Default.** In making the Loan, Beneficiary has relied upon the rights available to Beneficiary under this Deed of Trust upon the occurrence of a Default, including, but not limited to, the rights to accelerate the payment of any and all amounts secured by this Deed of Trust, to sell the Property encumbered by this Deed of Trust pursuant to the power of sale granted hereunder, the right to foreclose this Deed of Trust as a mortgage, and the right to have a receiver appointed. In addition to any other damages that might be recoverable by Beneficiary under the terms of this Deed of Trust, Trustor shall be liable for any damages incurred by Beneficiary because Beneficiary is, for any reason, denied the opportunity to exercise Beneficiary's rights upon the occurrence of a Default, including, but not limited to, such damages as are occasioned by depreciation of the Property, loss of use of the Property by Beneficiary, and all opportunity costs incurred through the loss of use of any funds as would have been received by Beneficiary through exercise of the power of sale or foreclosure, or the appointment of a receiver.

5.10 **Hazardous Materials.** Upon the occurrence of a Default as a result of any of the representations or warranties concerning Hazardous Materials (as defined in the Loan Agreement) set forth in the Loan Agreement or any other Loan Document being untrue, Beneficiary may commence and maintain an action or actions in any court of competent jurisdiction for breach of contract, whether commenced prior to foreclosure of the Property or after foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary (the "Environmental Costs") incurred or advanced by Beneficiary relating to the cleanup, remediation or other response action required by any applicable law relating to Hazardous Materials or to which Beneficiary believes necessary to protect the Property, it being conclusively presumed between Beneficiary and Trustor that all such Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remediation or other response action of or to the Property were

made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this Section (including without limitation court costs, consultant fees and attorneys' fees, whether incurred in litigation or not and whether before or after judgment) shall be considered Indebtedness and shall bear interest at the Default Rate from the date of expenditure until paid in full. Beneficiary shall have the right to bid, at the sale of the Property held under Section 5.3 the amount of the Environmental Costs, plus interest at the Default Rate, in addition to any other amounts comprising the Indebtedness.

**5.11 Attorneys' Fees in the Event of Foreclosure.** If this Deed of Trust is foreclosed by the Trustee, the Trustee shall allow a reasonable amount of attorneys' fees for services rendered in the supervision of such foreclosure proceedings as a part of the cost of foreclosure. If the foreclosure proceedings are made through court proceedings, attorneys' fees in an amount determined by the court to be reasonable shall be taxed by the court as a part of the cost of such foreclosure proceedings.

**5.12 Waiver of Right to Marshall Assets.** Trustor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold and to have the Property and any other property now or hereafter constituting security for the Indebtedness marshalled upon any foreclosure of the lien of this Deed of Trust. Beneficiary shall have the right to sell the Property as a whole or in separate parcels.

**5.13 Beneficiary's Remedies Cumulative.** Each right, power, and remedy herein conferred upon Beneficiary or the Trustee is cumulative of every other right or remedy of Beneficiary or the Trustee, whether conferred herein or by law, and may be enforced concurrently.

## **6. MISCELLANEOUS.**

**6.1 Severability of Clauses.** If any term, covenant, condition, or provision of this Deed of Trust, the Note or the Loan Documents is held to be invalid, illegal, or unenforceable, this Deed of Trust, the Note or the Loan Documents shall be construed without such provision.

**6.2 Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be given (i) by FedEx (or other established express delivery service which maintains delivery records), (ii) by hand delivery, or (iii) by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses first set forth above, and to the Investor (as defined in the Loan Agreement) at the address provided in the Loan Agreement, or at such other address as the Parties may designate by written notice in the above manner. Such communications may also be given by facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon receipt, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery.

**6.3 Waiver.** Failure by Beneficiary to insist upon the strict performance of any covenant, agreement, term, or condition of this Deed of Trust or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No covenant, agreement, term, or condition in this Deed of Trust and

no breach thereof, may be waived, altered, or modified except by a written instrument executed by Beneficiary. The waiver of any breach shall not affect or alter this Deed of Trust, but each and every covenant, agreement, term, and condition of this Deed of Trust shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver, change, amendment, modification, cancellation, or discharge of any provision of this Deed of Trust, or any part hereof, will be valid unless in writing and signed by the parties hereto.

6.4 **Inspection of Property.** Beneficiary and its authorized representatives may enter and inspect all portions of the Property upon reasonable notice and at all reasonable times during normal business hours.

6.5 **Binding Effect.** This Deed of Trust shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns. If Trustor is now or is ever composed of more than one party, the obligations and warranties contained herein and arising therefrom are and shall be joint and several as to each such party.

6.6 **Applicable Law.** This Deed of Trust shall be governed by the laws of the State of Utah.

6.7 **Beneficiary Not Partner of Trustor; Trustor to Indemnify Beneficiary.** The exercise by Beneficiary of any of its rights, privileges or remedies conferred hereunder or under the Note or any other Loan Documents or under applicable law, shall not be deemed to render Beneficiary a partner or a co-venturer with Trustor or with any other person. Any and all of such actions will be exercised by Beneficiary solely in furtherance of its role as a secured lender advancing funds for use by Trustor as provided in this Deed of Trust. Trustor shall indemnify Beneficiary against any claim by any third party for any injury, damage or liability of any kind arising out of any failure of Trustor to perform its obligations in this transaction, shall notify Beneficiary of any lawsuit based on such claim, and at Beneficiary's election, shall defend Beneficiary therein at Trustor's own expense by counsel satisfactory to Beneficiary or shall pay Beneficiary's reasonable costs and attorneys' fees if Beneficiary chooses to defend itself on any such claim.

6.8 **Entire Agreement.** Once the Note, this Deed of Trust, and all of the other Loan Documents, if any, have been executed, all of the foregoing constitutes the entire agreement between the parties hereto and none of the foregoing may be modified or amended in any manner other than by supplemental written agreement executed by the parties hereto; provided, all written and oral representations of Trustor, and of any partner, principal or agent of Trustor, previously made to Beneficiary shall be deemed to have been made to induce Beneficiary to make the loan secured hereby and to enter into the transaction evidenced hereby and shall survive the execution hereof and the closing pursuant hereto.

6.9 **No Third Party Benefits.** This Deed of Trust, the Note and the other Loan Documents, if any, are made for the sole benefit of Trustor and Beneficiary and their successors and assigns, and no other legal interest of any kind shall be created hereunder or by reason of any of the foregoing. Whether or not Beneficiary elects to employ any or all the rights, powers or remedies available to it under any of the foregoing, Beneficiary shall have no obligation or liability of any kind to any third party by reason of any of the foregoing or any of Beneficiary's actions or omissions pursuant thereto or otherwise in connection with this transaction.

6.10 **Effect of Foreclosure on Insurance Claims.** In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment of the Indebtedness, all right, title, and interest of Trustor in and to any insurance policies then in force shall pass to the purchaser or grantee. If, prior to any such transfer of title, any claim under any insurance policy has not been paid and distributed in accordance with the terms of this Deed of Trust and any such claim is paid after any such transfer of title, then, to the extent the Indebtedness was not fully discharged in conjunction with such transfer of title, the insurance proceeds so paid shall be the property of Beneficiary and shall be paid to Beneficiary as payment on the Indebtedness to the extent not fully discharged, and Trustor hereby assigns, transfers, and sets over to Beneficiary all of its right, title, and interest in and to such sum. The balance, if any, shall belong to Trustor as its interests may appear. Notwithstanding the above, Trustor shall retain an interest in the insurance policies above described during any redemption period.

6.11 **Headings.** Headings of the sections and paragraphs of this Deed of Trust are inserted for convenience only and shall not be deemed to constitute a part hereof.

6.12 **Defined Terms.** All capitalized terms used herein but not otherwise defined shall have the meanings given such terms in the Loan Agreement.

*[Signature Page Follows]*





## **EXHIBIT A**

That certain property located in Salt Lake County, Utah and described as follows:

**PARCEL 1:**

Commencing 12 rods East from the Northwest corner of Lot 5, Block 63, Plat "A", Salt Lake City Survey and running thence East 113.5 feet; thence South 165 feet; thence West 113.5 feet; thence North 165 feet to the point of beginning.

**PARCEL 1A:**

A right of way as set forth in that certain Decree of Distribution (and various documents of record) recorded September 27, 1932 as Entry No. 702460 in Book 94 at Page 543 of official records, to wit:

Commencing 2 feet West of the Northeast corner of said Lot 5 and running thence West 1 rod; thence South 10 rods; thence East 1 rod; thence North 10 rods of the place of beginning.

Parcel numbers 15-01-151-002, 15-01-151-003, and 15-01-151-004