

When Recorded Return to:

Snell & Wilmer L.L.P.
The Tabor Center
1200 Seventeenth Street, Suite 1900
Denver, Colorado 80202
Attn: Cindy Robinson, Esq.

APN(s): 12: 029: 0051 and 12: 029: 0052

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

THIS DEED OF TRUST SECURES A PROMISSORY NOTE, THE INTEREST RATE UNDER WHICH MAY VARY FROM TIME TO TIME ACCORDING TO CHANGES IN THE PRIME RATE ANNOUNCED BY BENEFICIARY OR ACCORDING TO CHANGES IN THE LONDON INTERBANK OFFERED RATE, IN ACCORDANCE WITH THE CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND BENEFICIARY.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE 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 ANNOTATED* §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 CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS dated as of October 24th, 2018 (this "Deed of Trust"), is executed by LEHI HOTEL PARTNERS I, LLC, a Utah limited liability company, as trustor (the "Trustor"), in favor of ARTISAN TITLE INSURANCE AGENCY, as trustee ("Trustee"), for the benefit of TCF NATIONAL BANK, a national banking association, its successors and assigns, as beneficiary (the "Beneficiary").

RECITALS:

A. Pursuant to the terms and conditions contained in that certain Construction and Term Loan Agreement dated as of even date herewith, executed by and between the Trustor and the Beneficiary (the "Loan Agreement"), the Beneficiary has agreed to loan to the Trustor the principal amount of Eleven Million Five Hundred Eighty Thousand and 00/100 Dollars (\$11,580,000.00) (the "Loan"). All initial capitalized terms not otherwise defined herein shall have the meanings given such terms in the Loan Agreement. The Loan shall be evidenced by that certain Promissory Note of even date herewith (as amended, restated or replaced from time to time, the "Note"), executed by the Trustor and made payable to the order of the Beneficiary in the maximum principal amount of the Loan and due in October of 2021, subject to extension to October of 2022 and October of 2023, as provided in the Loan Agreement (the "Maturity Date"), except as may be accelerated pursuant to the terms of the Note or of any other document or instrument now or hereafter given to evidence or secure the payment of the Note or delivered to induce the Beneficiary to disburse the proceeds of the Loan (the Note and the Loan Agreement, together with such other documents, as amended, restated or replaced from time to time, being collectively referred to herein as the "Loan Documents").

B. A condition precedent to the Beneficiary's extension of the Loan to the Trustor is the execution and delivery by the Trustor of this Deed of Trust.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor agrees as follows:

AGREEMENTS:

For the purpose of securing payment and performance of the Indebtedness (as defined below) Trustor hereby irrevocably and unconditionally grants, bargains, sells, conveys, transfers and assigns 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 that Trustor now has or may later acquire in and to the following property (referred to collectively herein as the "Property"):

(a) The real estate located in the County of Utah, State of Utah and legally described on Exhibit A attached hereto and made a part hereof (the "Land");

(b) All improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or

hereafter owned by the Trustor and located on, or used in connection with the Land or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of the Trustor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Trustor or on its behalf (the "Improvements");

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Trustor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Utah, *Utah Code Annotated* §§ 70A-9a – 101 et seq. (the "Code") in effect from time to time), escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Property and/or the businesses and operations conducted by the Trustor thereon, credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities and parking charges, the rendering of services by Trustor or any operator or manager of a hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and any other items of revenue, receipts and/or income as identified in the Uniform System of Accounts for the Lodging Industry, 11th Edition, published by the American Hotel and Lodging Association in conjunction with the HFTP (as from time to time amended), to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Trustor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) All interest of the Trustor in all leases now or hereafter on the Property, whether written or oral (each, a "Lease", and collectively, the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to the Trustor to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Trustor and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Property, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators,

engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Trustor and placed on the Land or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Deed of Trust and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Beneficiary, as a secured party, and the Trustor, as debtor, all in accordance with the Code;

(g) All of the Trustor's interests in General Intangibles, including Payment Intangibles and Software (each as defined in the Code) now owned or hereafter acquired and related to the Property, including, without limitation, all of the Trustor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which the Trustor is or may become a party and which relate to the Property; (ii) all obligations and indebtedness owed to the Trustor thereunder; (iii) all intellectual property related to the Property; and (iv) all choses in action and causes of action relating to the Property;

(h) All of the Trustor's accounts now owned or hereafter created or acquired as relate to the Property and/or the businesses and operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by the Trustor: (i) Accounts (as defined in the Code), contract rights book debts, notes, drafts, and other obligations or indebtedness owing to the Trustor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Trustor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Trustor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Trustor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Trustor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of the Trustor with respect to the Property (the property, interests and rights described in Subsections (f), (g) and (h) above are collectively referred to herein as the "Collateral"); and

(i) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds

or the taking of the Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Property or proceeds of any sale, option or contract to sell the Property or any portion thereof.

TO HAVE AND TO HOLD the Property, unto Trustee, its successors and assigns, IN TRUST, for the benefit of Beneficiary, in fee simple forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence of any Event of Default; the Trustor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Utah.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, LIBOR breakage charges, prepayment premium, if any, exit fee, if any, reimbursement obligations, fees and expenses for letters of credit issued by the Beneficiary for the benefit of the Trustor, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the obligations and liabilities of the Trustor to the Beneficiary under and pursuant to any Swap Agreement (as defined in the Loan Agreement), (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Trustor or any other obligor to or benefiting the Beneficiary which are evidenced or secured by or otherwise provided in the Note, this Deed of Trust or any of the other Loan Documents; and (iv) the reimbursement to the Beneficiary of any and all sums incurred, expended or advanced by the Beneficiary pursuant to any term or provision of or constituting additional indebtedness under or secured by this Deed of Trust, any of the other Loan Documents or any Swap Agreements that may evidence any Swap Obligations of the Trustor owing at any time to the Beneficiary, or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "Indebtedness"). For purposes of *Utah Code Annotated* § 57-1-28, and notwithstanding any other provision herein, Trustor agrees that (i) the Indebtedness shall include all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under any Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Property, and (ii) Beneficiary 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 either 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. Furthermore, any Swap Obligations owing by Trustor to Beneficiary, including without limitation any breakage fees or other amounts as may be necessary to restructure or unwind any Swap Agreement, shall be considered for all purposes to be additional interest on the Indebtedness secured by this Deed of Trust.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. The Trustor represents, warrants and covenants that (a) the Trustor is the holder of the fee simple title to the Property, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Beneficiary and as otherwise described on

Exhibit B attached hereto and made a part hereof (the "Permitted Exceptions"); and (b) the Trustor has legal power and authority to mortgage, transfer, sell, and convey the Property.

2. Trustor's Covenants and Agreements.

(a) Payment of Indebtedness. The Trustor shall, prior to the expiration of any grace period: (i) pay the Indebtedness when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Trustor as provided in the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents.

(b) Compliance with Loan Agreement. Trustor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

(c) Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by the Beneficiary in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Trustor covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Trustor for the enforceability of this Deed of Trust and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Deed of Trust; provided, however, that the total Indebtedness shall not in any event exceed two hundred percent of the stated principal amount of the Note.

3. Payment of Taxes and Assessments. The Trustor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Trustor, if applicable to the Property or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to the Trustor's right to contest the same, as provided by the terms hereof; and the Trustor will, upon written request, furnish to the Beneficiary duplicate receipts therefor within ten (10) days after the Beneficiary's request.

4. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Beneficiary, the Trustor or the Property, any tax is imposed or becomes due in respect of the Note or this Deed of Trust (excluding income, excise or franchise taxes imposed upon the Beneficiary, except as provided in Section 4(c) below), or any liens on the Property created thereby, then the Trustor shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Property for the purpose of taxation by creating any lien thereon, or imposing upon the Beneficiary any liability for the payment of all or any part of the Taxes required to be paid by the Trustor, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Beneficiary in the Property, or the manner of collection of Taxes so as to adversely affect this Deed of Trust, the Indebtedness, or the Beneficiary, then, and in any such event, the Trustor, upon demand by the Beneficiary, shall pay such Taxes, or reimburse the Beneficiary therefor on demand, unless the Beneficiary determines, in the Beneficiary's sole judgment, that such payment or reimbursement by the Trustor is unlawful or that the payment might, in the Beneficiary's judgment, constitute usury or render the Indebtedness wholly or partially usurious; in which event the Beneficiary may elect to declare the Indebtedness to be due and payable within the lesser of (i) thirty (30) days after written notice, or (ii) such shorter period as may be required to ensure compliance by Beneficiary with applicable law.

(c) Nothing contained herein shall require the Trustor to pay any income, franchise or excise tax imposed upon the Beneficiary, excepting only such income, franchise or excise tax which may be levied against the income of the Beneficiary as a complete or partial substitute for Taxes required to be paid by the Trustor hereunder.

5. Deposits.

(a) Maintenance Deposits. Trustor shall complete the Improvements to be constructed on the Property pursuant to the Loan Agreement, free and clear of any and all liens, subject to Section 7. Trustor shall not abandon the Property, shall keep and maintain the Property in good condition, repair, maintenance and operating condition free from any waste or misuse, and shall promptly repair and restore any buildings, improvements or structures now or hereafter on the Property which may become damaged or destroyed to their condition prior to any such damage or destruction. Should Trustor fail to comply with the foregoing, then at Beneficiary's option in its sole discretion, Trustor shall pay to Beneficiary monthly an amount equal to one-twelfth (1/12th) of the annual operating and maintenance costs of the Property as set forth on the most recent operating statement for the Property approved by Beneficiary (the "Maintenance Costs"). No amount so paid to Beneficiary shall be deemed to be trust funds, nor shall any sums paid bear interest. If, at any time, the funds being held by Beneficiary for any Maintenance Costs are exhausted, or if Beneficiary determines, in its sole discretion, that such funds will be insufficient to pay in full any Maintenance Costs when due, Trustor shall promptly pay to Beneficiary, upon demand, an amount which Beneficiary shall estimate as sufficient to make up the deficiency. If an Event of Default shall occur under the terms of this Deed of Trust, Beneficiary may, at its option, without being required to do so, apply any deposits on hand to the Indebtedness, in such order and manner as Beneficiary may elect. Other than the construction to be undertaken under the Loan Agreement, without the prior consent of Beneficiary, Trustor agrees that it will not construct or expand any improvements on the Property, erect any new improvements nor make any material alterations in any improvements which shall alter the basic structure,

decrease the market value or change the existing architectural character of the Property, nor remove or demolish any improvements.

(b) Tax and Insurance Deposits. Upon the occurrence of an Event of Default, at Beneficiary's sole discretion, the Trustor shall deposit with the Beneficiary, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of one hundred five percent (105.00%) of (a) the most recent ascertainable annual Taxes on the Property and (b) the insurance premiums for the policies of insurance required to be maintained in effect by the Trustor pursuant to the terms of the Loan Agreement (the "Premiums"). If requested by the Beneficiary, the Trustor shall also deposit with the Beneficiary an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by the Beneficiary. Such deposits are to be held without allowance of interest and are to be used for the payment of Taxes and Premiums next due and payable when they become due. So long as no Event of Default shall exist, the Beneficiary shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from the Trustor) or shall release sufficient funds to the Trustor for the payment thereof. Beneficiary shall release sufficient funds to pay the Premiums when due to the extent of funds available to do so. If the funds so deposited are insufficient to pay any such Taxes or Premiums for any year (or installments thereof, as applicable) when the same shall become due and payable, the Trustor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes and Premiums in full. If the funds so deposited exceed the amount required to pay such Taxes and Premiums for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of the Beneficiary. The Beneficiary, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

6. Effect of Changes in Laws Regarding Taxation. If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Property from the value thereof for the purpose of taxation or (b) the imposition upon the Beneficiary of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by the Trustor, or (c) a change in the method of taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust or the Beneficiary's interest in the Property, or the manner of collection of taxes, so as to affect this Deed of Trust or the Indebtedness or the holders thereof, then the Trustor, upon demand by the Beneficiary, shall pay such Taxes or charges, or reimburse the Beneficiary therefor; provided, however, that the Trustor shall not be deemed to be required to pay any income or franchise taxes of the Beneficiary. Notwithstanding the foregoing, if in the opinion of counsel for the Beneficiary it is or may be unlawful to require the Trustor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum

amount permitted by law, then the Beneficiary may declare all of the Indebtedness to be immediately due and payable.

7. Liens, Contest and Defense of Title.

(a) The Trustor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Exceptions), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Deed of Trust, including liens for labor or materials with respect to the Property ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, the Trustor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Deed of Trust; and (ii) within ten (10) days after the Trustor has been notified of the filing of any such Mechanic's Liens, the Trustor shall have notified the Beneficiary in writing of the Trustor's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Beneficiary, insuring the Beneficiary against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Trustor may deposit and keep on deposit with the Beneficiary (or such depository as may be designated by the Beneficiary) a sum of money sufficient, in the judgment of the Beneficiary, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Beneficiary in its sole discretion to protect the priority of this Deed of Trust. In case the Trustor shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Beneficiary may, at its option, apply any money and liquidate any securities then on deposit with the Beneficiary (or other depository designated by the Beneficiary) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Beneficiary's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Trustor shall forthwith, upon demand, deposit with the Beneficiary (or other depository designated by the Beneficiary) the sum which shall (in Beneficiary's reasonable judgment, when added to the funds then on deposit with Beneficiary) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Beneficiary). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the

Beneficiary has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Beneficiary (or other depository) under this Section 7(b) shall be paid to the Trustor, provided that no Event of Default shall then exist.

(c) If the lien and security interest of the Beneficiary in or to the Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Trustor shall immediately notify the Beneficiary and shall appear in and defend any action or proceeding purporting to affect the Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Property.

8. Beneficiary's Interest In and Use of Deposits. Upon an Event of Default, the Beneficiary may, at its option, apply any monies at the time on deposit pursuant to Section 5 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as the Beneficiary may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, the Trustor shall immediately, upon demand by the Beneficiary, deposit with the Beneficiary an amount equal to the amount expended by the Trustor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to the Trustor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of the Trustor. The Beneficiary shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless the Trustor, prior to an Event of Default, shall have requested the Beneficiary in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. The Beneficiary shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

9. Insurance. The Trustor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as may reasonably be required by the Beneficiary, in accordance with the terms, coverages and provisions described in the Loan Agreement.

10. Condemnation. If all or any part of the Property are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, the provisions of the Loan Agreement shall govern the use of awards and condemnation proceeds.

11. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over the Trustor, any tax is due or becomes due in respect of the execution and delivery of this Deed of Trust, the Note or any of the other Loan Documents, the Trustor shall pay such tax in the manner required by any such law. The Trustor further agrees to reimburse the Beneficiary for any sums which the Beneficiary may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, the Trustor shall not be required to pay any income or franchise taxes of the Beneficiary.

12. Lease Assignment. The Trustor acknowledges that, concurrently herewith, the Trustor has executed and delivered to the Beneficiary, as additional security for the repayment of the Loan, an Assignment of Leases and Rents (the "Assignment") pursuant to which the Trustor has assigned to the Beneficiary interests in the leases of the Property and the rents and income from the Property. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Deed of Trust. The Trustor agrees to abide by all of the provisions of the Assignment. This Section 12 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-26-101 et seq. (the "Rent Act"), and in the event of any conflict or inconsistency between the provisions of this Section 12 and the provisions of the Rent Act, the provisions of the Rent Act shall control and Beneficiary shall have all rights and remedies available under the Rent Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

13. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in the Trustor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by the Beneficiary, notwithstanding such extension, variation, release or change.

14. Beneficiary's Performance of Defaulted Acts and Expenses Incurred by Beneficiary or Trustee. If an Event of Default has occurred, the Beneficiary may, but need not, make any payment or perform any act herein required of the Trustor in any form and manner deemed expedient by the Beneficiary, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or consent to any tax or assessment or cure any default of the Trustor in any lease of the Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Beneficiary in regard to any tax referred to in Section 11 above or to protect the Property or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by the Trustor to the Beneficiary, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by the Beneficiary or Trustee in connection with (a) sustaining the lien of this Deed of Trust or its priority, (b) protecting or enforcing any of the Beneficiary's or Trustee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Deed of Trust, any of the other Loan Documents or the Property, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Deed of Trust, any of the other Loan Documents or the Property, shall be so much additional Indebtedness, and shall become immediately due and payable by the Trustor to the Beneficiary or Trustee, as applicable, upon demand, and with interest thereon accruing from the date of such demand until

paid at the Default Rate. The interest accruing under this Section shall be immediately due and payable by the Trustor to the Beneficiary or Trustee, as applicable, and shall be additional Indebtedness evidenced by the Note and secured by this Deed of Trust. The Beneficiary's failure to act shall never be considered as a waiver of any right accruing to the Beneficiary on account of any Event of Default. Should any amount paid out or advanced by the Beneficiary or Trustee hereunder, or pursuant to any agreement executed by the Trustor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof, then the Beneficiary shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

15. Security Agreement.

(a) Grant of Security Interest. Trustor hereby grants to Beneficiary a security interest in the property described in Subsections (d), (e), (f), (g), (h), (i) and (j) of the granting clause of this Deed of Trust (the "Personal Property") to secure repayment of the Indebtedness. This Deed of Trust constitutes a security agreement with respect to all Personal Property in which Beneficiary is granted a security interest hereunder, and Beneficiary shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) Perfection. Trustor hereby consents to any instrument that may be requested by Beneficiary to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Deed of Trust or the interest of Beneficiary in the Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Trustor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Beneficiary in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Trustor hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Trustor hereby irrevocably constitutes and appoints Beneficiary as the attorney-in-fact of Trustor, to file with the appropriate filing office any such instruments. In addition, Trustor hereby authorizes Beneficiary to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Trustor.

(c) Place of Business. Trustor maintains its chief executive office as set forth as the address of Trustor in Section 29 below, and Trustor will notify Beneficiary in writing of any change in its place of business within five (5) days of such change.

(d) Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing under Article 9a of the Code, covering any Property that now is or later may become fixtures attached to the Land or Improvements.

(e) Representations and Warranties. The Trustor represents and warrants that: (i) the Trustor is the record owner of the Property; (ii) the Trustor's chief executive office is located in the State of Utah; (iii) the Trustor's state of organization is the State of Utah; (iv) the Trustor's exact legal name is as set forth on Page 1 of this Deed of Trust; (v) Trustor is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof; (vi) the Personal Property will not be removed from the Property without the consent of the Beneficiary; and (vii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto. The following addresses are the mailing addresses of the Trustor, as debtor under the Code, and the Beneficiary, as secured party under the Code, respectively:

Trustor: Lehi Hotel Partners I, LLC
748 W. Heritage Park Blvd., #203
Layton, Utah 84041
Attn: Michael Christensen

Beneficiary: TCF National Bank
8085 South Chester Street, Suite 201
Centennial, CO 80112
Attn: Erik Frandsen

(f) Trustor agrees that:

(i) The Trustor (being the debtor as that term is used in the Code) is and will be the true and lawful owner of the Property, subject to the liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting the Beneficiary and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(ii) The Personal Property is to be used by the Trustor solely for business purposes.

(iii) The Personal Property will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of the Beneficiary (being the secured party as that term is used in the Code). The Personal Property may be affixed to the Land but not be affixed to any other real estate.

(iv) The only persons having any interest in the Property are the Trustor, the Beneficiary and holders of interests, if any, expressly permitted hereby.

(v) No Financing Statement (other than Financing Statements showing the Beneficiary as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Property or any proceeds thereof is on file in any public office except pursuant hereto; and the Trustor, at its own cost and expense, upon demand, will furnish to the Beneficiary such further information and will execute and deliver to the Beneficiary such financing statements and other documents in form satisfactory to the Beneficiary and will do all such acts as the Beneficiary may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Property as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting the Beneficiary and no other party, and liens and encumbrances (if any) expressly permitted hereby; and the Trustor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Beneficiary to be desirable. The Trustor hereby irrevocably authorizes the Beneficiary at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto, without the signature of the Trustor that (i) indicate the Personal Property (A) is comprised of all assets of the Trustor or words of similar effect, regardless of whether any particular asset comprising a part of the Collateral falls within the scope of Article 9 or 9a of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or (B) as being of an equal or lesser scope or within greater detail as the grant of the security interest set forth herein, and (ii) contain any other information required by Section 5 of Article 9 or 9a of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether the Trustor is an organization, the type of organization and any organizational identification number issued to the Trustor, and (B) in the case of a financing statement filed as a fixture filing or indicating Property as as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Property relates. The Trustor agrees to furnish any such information to the Beneficiary promptly upon request. The Trustor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by the Beneficiary in any jurisdiction prior to the date of this Deed of Trust. In addition, the Trustor shall make appropriate entries on its books and records disclosing the Beneficiary's security interests in the Property.

(vi) Upon an Event of Default hereunder, the Beneficiary shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as the Trustor can give authority therefor,

with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Property or any part thereof may be situated and remove the same therefrom (provided that if the Personal Property is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Beneficiary shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Trustor's right of redemption in satisfaction of the Trustor's obligations, as provided in the Code. The Beneficiary may render the Property unusable without removal and may dispose of the Personal Property on the Land. The Beneficiary may require the Trustor to assemble the Collateral and make it available to the Beneficiary for its possession at a place to be designated by the Beneficiary which is reasonably convenient to both parties. The Beneficiary will give the Trustor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of the Trustor hereinafter set forth at least ten (10) days before the time of the sale or disposition. The Beneficiary may buy at any public sale. The Beneficiary may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If the Beneficiary so elects, the Personal Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by the Beneficiary, shall be applied against the Indebtedness in such order or manner as the Beneficiary shall select. The Beneficiary will account to the Trustor for any surplus realized on such disposition.

(vii) The Trustor hereby agrees that: (i) where Collateral is in possession of a third party, the Trustor will join with the Beneficiary in notifying the third party of the Beneficiary's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of the Beneficiary; (ii) the Trustor will cooperate with the Beneficiary in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and (iii) until the Indebtedness is paid in full, Trustor will not change the state where it is located or change its name or form of organization without giving the Beneficiary at least thirty (30) days prior written notice in each instance.

(g) Notwithstanding anything to the contrary herein, it is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of 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 Annotated* § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with *Utah Code Annotated* § 57-1-30 or other applicable law.

16. Restrictions on Transfer.

(a) The Trustor, without the prior written consent of the Beneficiary, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

(i) The Property or any part thereof or interest therein, excepting only sales or other dispositions of Collateral ("Obsolete Collateral") no longer useful in connection with the operation of the Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) Any shares of capital stock of a corporate Trustor, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Trustor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this Subsection (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

(iii) All or any part of the managing member or manager interest, as the case may be, in a limited liability company Trustor or a limited liability company which is a general partner of a partnership Trustor;

(iv) All or any part of the general partner or joint venture interest, as the case may be, of a partnership Trustor or a partnership which is a manager of a limited liability company Trustor or the conversion of a partnership Trustor to a corporation or limited liability company; or

(v) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of the Trustor and/or owns a controlling interest in the Trustor or if Kevin Garn or Nathan Ricks shall die or no longer be Managers of the Trustor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section shall not apply (i) to liens securing the

Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, or (iv) to leases permitted by the terms of the Loan Documents, if any.

(b) In determining whether or not to make the Loan, the Beneficiary evaluated the background and experience of the Trustor and its members in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is the Beneficiary's security for the Note. The Trustor and its members are well experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Trustor recognizes that the Beneficiary is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Trustor. The Trustor further recognizes that any secondary junior financing placed upon the Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Beneficiary to take measures and incur expenses to protect its security; (iii) would detract from the value of the Property should the Beneficiary come into possession thereof with the intention of selling same; and (iv) would impair the Beneficiary's right to accept a deed in lieu of foreclosure, as a foreclosure by the Beneficiary would be necessary to clear the title to the Property. In accordance with the foregoing and for the purposes of (a) protecting the Beneficiary's security, both of repayment and of value of the Property; (b) giving the Beneficiary the full benefit of its bargain and contract with the Trustor; (c) allowing the Beneficiary to raise the interest rate and collect assumption fees; and (d) keeping the Property free of subordinate financing liens, the Trustor agrees that if this Section is deemed a restraint on alienation, that it is a reasonable one.

17. Events of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Deed of Trust:

(a) Trustor fails to pay (i) any installment of principal or interest payable pursuant to the terms of the Note when due, or (ii) any other amount payable to Beneficiary under the Note, this Deed of Trust or any of the other Loan Documents within five (5) days after written notice from Beneficiary; or, if another period is specified in any such Loan Document, the period specified therein; or

(b) Trustor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Trustor under the Note, this Deed of Trust or any of the other Loan Documents and not specifically described in this Section or in the Default section of any other Loan Document; provided, however, that if such failure by its nature can be

cured, then so long as the continued operation, safety and value of the Property, and the priority, validity and enforceability of the liens created by this Deed of Trust or any of the other Loan Documents, are not impaired, threatened or jeopardized, then Trustor shall have a period (the "Cure Period") of thirty (30) days after Trustor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period; provided further that if such failure by its nature can be cured but cannot be cured by the payment of money and Trustor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate; or

(c) the occurrence of a Prohibited Transfer; or

(d) the occurrence of an Event of Default under the Loan Agreement or any of the other Loan Documents.

If an Event of Default occurs, the Beneficiary may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Trustor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

18. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, the Beneficiary and Trustee (at Beneficiary's direction) shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Deed of Trust or any of the other Loan Documents in accordance with *Utah Code Annotated* Title 57, Chapter 1 (as the same may be amended from time to time, the "Act"). In the event of a foreclosure sale, the Beneficiary and Trustee (at Beneficiary's direction) is hereby authorized, without the consent of the Trustor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Beneficiary or Trustee (at Beneficiary's direction) may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies. Any person, including Trustor or Beneficiary, or its designee, may purchase the Property at the sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a Trustee's deed, in accordance with *Utah Code Annotated* § 57-1-28, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

Upon any sale made under or by virtue of this Section 18, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 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.

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 Annotated* § 57-1-32 or other applicable law. Trustor agrees for purposes of *Utah Code Annotated* § 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 Annotated* § 57-1-32.

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.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Beneficiary or Trustee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Beneficiary or Trustee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this Section and such other expenses and fees as may be incurred in the enforcement of the Trustor's obligations hereunder, the protection of said Property and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney employed by the Beneficiary or Trustee in any litigation or proceeding affecting this Deed of Trust, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by the Trustor, with interest thereon until paid at the Default Rate and shall be secured by this Deed of Trust.

19. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Property shall be distributed and applied as follows:

FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed.

SECOND: To payment of the Indebtedness secured by this Deed of Trust.

THIRD: The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in 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, in accordance with *Utah Code Annotated* § 57-1-29 or any successor provision of Law.

20. Postponement. From time to time in accordance with then-applicable Law, Trustee may, and in any event at Beneficiary's request shall, postpone any foreclosure sale by public announcement at the time and place noticed for that sale, 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 Annotated* § 57-1-27.

21. Reinstatement. 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 Annotated* § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 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.

22. Appointment of Receiver. Upon the occurrence and during the continuation of an Event of Default or upon the commencement of any proceedings to foreclose or enforce this Deed of Trust, to enforce the specific performance hereof, to enforce any right of Trustee or Beneficiary hereunder, Beneficiary shall be entitled, as a matter of right, if it so elects, without the giving of notice to any other person and without regard to the adequacy or inadequacy of any security for the Indebtedness, either before or after declaring all sums evidenced by any of the Indebtedness, to be due and payable, to the appointment of a receiver or receivers for the Property. Such right shall be in addition to any right to appoint a receiver for the Property pursuant to the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101 et. seq, for the Property. Furthermore, such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Trustor at the time of application for such receiver and without regard to the value of the Property or whether the same shall be then occupied as a homestead or not and the Beneficiary hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Trustor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits, or as otherwise provided by applicable law. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Deed of Trust. or any tax,

special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

23. Beneficiary's Right of Possession in Case of Default. At any time after an Event of Default has occurred, the Trustor shall, upon demand of the Beneficiary, surrender to the Beneficiary possession of the Property. The Beneficiary, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Trustor and its employees, agents or servants therefrom, and the Beneficiary may then hold, operate, manage and control the Property, either personally or by its agents. The Beneficiary shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Beneficiary shall have full power to:

(a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Trustor to cancel the same;

(b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Trustor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(d) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Property as may seem judicious to Beneficiary, to insure and reinsure the Property and all risks incidental to Beneficiary's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

(e) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of taxes, premiums and other charges applicable to the Property, or in reduction of the Indebtedness in such order and manner as Beneficiary shall select, in its sole discretion; and

(f) receive and collect the rents, issues, profits and revenues of the Property personally or through a receiver so long as an Event of Default shall exist and during the

pendency of any foreclosure proceedings or actions and during any redemption period, and the Trustor agrees to consent to a receiver if it is believed necessary or desirable by the Beneficiary to enforce its rights under this Subsection. The collection of rents, issues, profits or revenues of the Property by the Beneficiary shall in no way waive the right of the Beneficiary to foreclose or cause the foreclosure of this Deed of Trust in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Beneficiary a mortgagee in possession in the absence of the actual taking of possession of the Property. The right to enter and take possession of the Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Beneficiary and Trustee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Trustor promises to pay upon demand together with interest thereon at the Default Rate. Beneficiary shall not be liable to account to Trustor for any action taken pursuant hereto other than to account for any rents actually received by Beneficiary. Without taking possession of the Property, Beneficiary may, in the event the Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Indebtedness payable upon demand with interest thereon at the Default Rate.

24. Application of Income Received by Beneficiary. The Beneficiary, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as the Beneficiary may determine:

(a) to the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include compensation to the Beneficiary and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Property; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

25. Compliance with Utah Foreclosure Law.

(a) If any provision in this Deed of Trust shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with the Act.

(b) If any provision of this Deed of Trust shall grant to the Beneficiary and/or Trustee (including the Beneficiary acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 25 of this Deed of Trust any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Beneficiary or in such receiver under the Act in the absence of said provision, the Beneficiary, Trustee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Beneficiary, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Sections 14, 18 or 33 of this Deed of Trust, shall be added to the Indebtedness and/or by the judgment of foreclosure.

26. Rights Cumulative. Each right, power and remedy herein conferred upon the Beneficiary or Trustee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Beneficiary or Trustee (as applicable and at Beneficiary's direction), and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Beneficiary or Trustee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

27. Beneficiary's Right of Inspection. The Beneficiary and its representatives shall have the right to inspect the Property and the books and records with respect thereto at all reasonable times upon not less than twenty four (24) hours prior notice to the Trustor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

28. Release Upon Payment and Discharge of Trustor's Obligations. The Beneficiary shall release this Deed of Trust and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by the Beneficiary in connection with the execution of such release.

29. Notices Any notices, communications and waivers under this Deed of Trust shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

To the Beneficiary	TCF National Bank 8085 South Chester Street, Suite 201 Centennial, Colorado 80112 Attn: Erik Frandsen
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With a copy to:	Snell and Wilmer L.L.P.
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1200 Seventeenth Street, Suite 1900
 Denver, CO 80202
 Attn: Andy Pidcock, Esq.

To the Trustor: Lehi Hotel Partners I, LLC
 748 W. Heritage Park Blvd., #203
 Layton, Utah 84041
 Attn: Michael Christensen

With copy to: Lehi Hotel Partners I, LLC
 748 W. Heritage Park Blvd., #203
 Layton, Utah 84041
 Attn: Dean Smith, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next Business Day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third Business Day following the day sent or when actually received.

30. Waiver of Right to Redeem - Waiver of Appraisal, Valuation, Etc. Trustor 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 Moratorium 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 marshalled 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. In the event of any sale made under or by virtue of this instrument, the whole of the Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Beneficiary may determine in its sole discretion, (but subject to Borrower's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Land, if consisting of several known lots or parcels, shall be sold). Beneficiary shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Beneficiary so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Beneficiary with the amount payable to Beneficiary out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Indebtedness, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. To the fullest extent permitted by law, Trustor, on behalf of Trustor, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to the Act, and (ii) any and all rights of reinstatement.

31. Protective Advances.

(a) Advances, disbursements and expenditures made by Beneficiary for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Deed of Trust, constitute "Protective Advances":

(b) all advances by Beneficiary in accordance with the terms of this Deed of Trust to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (B) preserve the lien of this Deed of Trust or the priority thereof; or (C) enforce this Deed of Trust, as set forth in the Act;

(c) payments by Beneficiary of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Deed of Trust; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Property, as referred to in the Act;

(d) advances by Beneficiary in settlement or compromise of any claims asserted by claimants under any prior liens;

(e) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Deed of Trust; (B) in connection with any action, suit or proceeding brought by or against the Beneficiary for the enforcement of this Deed of Trust or arising from the interest of the Beneficiary hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(f) Beneficiary's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and any confirmation hearing;

(g) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Deed of Trust;

(h) expenses deductible from proceeds of sale pursuant to the Act; and

(i) expenses incurred and expenditures made by Beneficiary for any one or more of the following: (A) premiums for casualty and liability insurance paid by Beneficiary whether or not Beneficiary or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to any limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by the Act; (B) repair or

restoration of damage or destruction in excess of available Insurance Proceeds or condemnation awards; (C) payments required or deemed by Beneficiary to be for the benefit of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(j) All Protective Advances shall be so much additional Indebtedness, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(k) This Deed of Trust shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Deed of Trust is recorded pursuant to the Act.

(l) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

(i) determination of the amount of Indebtedness at any time;

(ii) indebtedness found due and owing to the Beneficiary in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Section 57-1-32 of the Act.

32. Contests. Notwithstanding anything to the contrary herein contained, the Trustor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Property (each, a "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) The Trustor shall forthwith give notice of any Contested Lien to the Beneficiary at the time the same shall be asserted;

(b) The Trustor shall either pay under protest or deposit with the Beneficiary the full amount (the "Lien Amount") of such Contested Lien, together with such amount as the Beneficiary may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment the Trustor may furnish to the Beneficiary a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to the Beneficiary;

(c) The Trustor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Property, and shall permit the Beneficiary to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of the Beneficiary's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

(d) The Trustor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to the Trustor, or (ii) forthwith upon demand by the Beneficiary if, in the opinion of the Beneficiary, and notwithstanding any such contest, the Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if the Trustor shall fail so to do, the Beneficiary may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Beneficiary to obtain the release and discharge of such liens; and any amount expended by the Beneficiary in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that the Beneficiary may in such case use and apply monies deposited as provided in Subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

33. Expenses Relating to Note and Deed of Trust.

(a) The Trustor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Deed of Trust or any of the other Loan Documents, including without limitation, the Beneficiary's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Deed of Trust and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Deed of Trust and all federal, state, county and municipal taxes, and other taxes (provided the Trustor shall not be required to pay any income or franchise taxes of the Beneficiary), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Deed of Trust. The Trustor recognizes that, during the term of this Deed of Trust, the Beneficiary:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which the Beneficiary shall be a party by reason of the Loan

Documents or in which the Loan Documents or the Property are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, the Beneficiary's taking possession of and managing the Property, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with the Trustor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Property, the assumption of liability for any of the Indebtedness or the transfer of the Property in lieu of foreclosure; or

(vi) May enter into negotiations with the Trustor or any of its agents, employees or attorneys pertaining to the Beneficiary's approval of actions taken or proposed to be taken by the Trustor which approval is required by the terms of this Deed of Trust.

(b) All expenses, charges, costs and fees described in this Section shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by the Trustor forthwith upon demand.

34. Statement of Indebtedness. The Trustor, within seven days after being so requested by the Beneficiary, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Deed of Trust, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

35. Further Instruments. Upon request of the Beneficiary, the Trustor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Deed of Trust and of the other Loan Documents.

36. Additional Indebtedness Secured. All persons and entities with any interest in the Property or about to acquire any such interest should be aware that this Deed of Trust secures more than the stated principal amount of the Note and interest thereon; this Deed of Trust secures any and all other amounts which may become due under the Note, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the

Indebtedness, including, without limitation, any and all amounts expended by the Beneficiary to operate, manage or maintain the Property or to otherwise protect the Property or the lien of this Deed of Trust.

37. Indemnity. The Trustor hereby covenants and agrees that no liability shall be asserted or enforced against the Beneficiary or Trustee in the exercise of the rights and powers granted to the Beneficiary or Trustee in this Deed of Trust, and the Trustor hereby expressly waives and releases any such liability, except to the extent resulting from the gross negligence or willful misconduct of the Beneficiary (as to the Beneficiary) or Trustee (as to the Trustee). The Trustor shall indemnify and save the Beneficiary and Trustee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "Claims"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Beneficiary or Trustee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Beneficiary or Trustee may or does become a party, either as plaintiff or as a defendant, by reason of this Deed of Trust or for the purpose of protecting the lien of this Deed of Trust; (b) the offer for sale or sale of all or any portion of the Property; and (c) the ownership, leasing, use, operation or maintenance of the Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Property to the Beneficiary or Trustee in accordance with the terms of this Deed of Trust; provided, however, that the Trustor shall not be obligated to indemnify or hold the Beneficiary or Trustee harmless from and against any Claims directly arising from its own gross negligence or willful misconduct. All costs provided for herein and paid for by the Beneficiary shall be so much additional Indebtedness and shall become immediately due and payable upon demand by the Beneficiary and with interest thereon from the date incurred by the Beneficiary until paid at the Default Rate.

38. Compliance with Environmental Laws. Concurrently herewith the Trustor and the Guarantors have executed and delivered to the Beneficiary that certain Environmental Indemnity Agreement dated as of the date hereof (the "Indemnity") pursuant to which the Trustor and the Guarantors have indemnified the Beneficiary for environmental matters concerning the Property, as more particularly described therein. The Indemnity is one of the Loan Documents, but notwithstanding anything to the contrary herein or any other Loan Document, this Deed of Trust does not secure the obligations of Trustor or any obligor under the Indemnity.

39. Subrogation. If any part of the Indebtedness is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Property or any part thereof, then by advancing the monies to make such payment, the Beneficiary shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

40. Business Loan.

(a) The Trustor declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the Loan is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Deed of Trust are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable under the provisions of any applicable law.

41. 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 Utah, 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.

(a) As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Deed of Trust, means and included all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the 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.

42. Mechanic's Liens; State Construction Registry.

(a) Trustor agrees to 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 shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices. Trustor shall 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 Annotated* § 38-1a-201. Trustor shall 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 shall 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 Annotated* § 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 Deed of Trust.

(e) Trustor shall 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 shall cause, as a condition precedent to the closing of the Loan, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be 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 shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Encumbrances), 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 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 shall 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 Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 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 Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) 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 shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Land 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 Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall,

immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any 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.

43. Waiver of Certain Rights. With respect to the Property (including the Land which is located in the State of Utah), notwithstanding anything contained herein to the contrary, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, *Utah Code Annotated* § 78B-6-901. Notwithstanding anything to the contrary, Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

44. Trustee

(a) Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary and recorded in the county in which the Land is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder; and said successor will, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of said predecessor.

(b) Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and without affecting the personal liability of any person for payment of the Indebtedness or the effect of this Deed of Trust upon the remainder of said Property, Trustee may (a) reconvey any part of said Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

(c) Acceptance by Trustee. Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

(d) Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (a) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel; (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through Trustee's agents or attorneys; (c) to select and employ, in and about the execution of Trustee's 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, and Trustee shall not be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith); and (d) 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 Property for debts contracted for or liability or damages incurred in the management or operation of the Property. 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 rendering Trustee's services hereunder. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses that may be incurred by Trustee in the performance of Trustee's duties.

(e) 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.

(f) 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 any 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.

(g) Succession Instruments. Any substitute trustee appointed in accordance with applicable law, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, and trusts of the substitute trustee's 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.

(h) 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.

45. Miscellaneous.

(a) Successors and Assigns. This Deed of Trust and all provisions hereof shall be binding upon and enforceable against the Trustor and its assigns and other successors. This Deed of Trust and all provisions hereof shall inure to the benefit of the Beneficiary, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions. In the event that any provision of this Deed of Trust is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Trustor and the Beneficiary shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Deed of Trust and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

(c) Governing Law. THIS INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF COLORADO. NOTWITHSTANDING THE FOREGOING, AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH. Whenever possible, each provision of this Deed of Trust and any other statement, instrument or transaction contemplated hereby or relating hereto shall be interpreted in such manner as to be effective and valid under such applicable law, but, if any provision of this Deed of Trust or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under such applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Deed of Trust or any other statement, instrument or transaction contemplated hereby or relating hereto.

(d) Municipal Requirements. Except as otherwise provided in the Master Declaration of Protective Covenants, Conditions and Restrictions for BAK Commercial/Retail Developments, Lehi City, Utah County, State of Utah recorded on September 26, 2001, as Entry No. 97759:2001, Utah County, Utah Recorder's Office, and it may be amended, modified and supplements as of the date of this Agreement and the Easement and Maintenance Agreement dated in 2018 by and between T-STAT One, LLC and Borrower (collectively referred to as the "Easement/CC&Rs"), the Trustor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Deed of Trust to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Trustor hereby assigns to the Beneficiary any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Except as otherwise provided in the Easement/CC&Rs. similarly, no building or other improvement on the Property shall rely

on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Trustor which would result in a violation of any of the provisions of this Subsection shall be void.

(e) Litigation. Trustor, at its sole cost and expense, shall appear in and defend any dispute, action, suit or proceeding purporting to relate to or affect the Note, the Loan Agreement or the security therefor, including, without limitation, this Deed of Trust or the Property. If any action or proceeding relating to or affecting the Note, this Deed of Trust, the Loan Agreement or the Property is commenced or threatened, to which action or proceeding Beneficiary or Trustee is made a party, or in which it becomes necessary or desirable, in Beneficiary's reasonable opinion, to defend or uphold, or to consider defending or upholding, the lien of this Deed of Trust, or to protect the Property or any part thereof, or to exercise, or to obtain the right to exercise, any of Beneficiary's or Trustee's rights, powers and remedies hereunder, including, without limitation, any foreclosure or commencement of foreclosure proceedings, probate proceedings and bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceedings, or with respect to which Beneficiary or Trustee otherwise incurs costs or expenses, all sums paid by Beneficiary or Trustee in order to determine the merits thereof, to establish or defend the rights and liens of this Deed of Trust, to protect the Property or any part thereof and to exercise, or to obtain the right to exercise, any of Beneficiary's or Trustee's rights, powers and remedies hereunder, and/or otherwise incurred by Beneficiary or Trustee in connection therewith (including, without limitation, attorneys' fees and costs and allowances prior to trial, at trial and on appeal) and whether suit be brought or not, and whether or not Beneficiary or Trustee prevails therein, shall be paid, upon demand, to Beneficiary or Trustee, as applicable, by Trustor, together with interest thereon at the Interest Rate from the date incurred, and any such sum or sums shall be secured thereby.

(f) Adjustable Rate Note. The Note secured by this Deed of Trust provides for adjustments in its Interest Rate from time to time in accordance with its terms. Reference is made to the Note for the time, terms and conditions of the adjustments in the Interest Rate. Such times, terms and conditions are incorporated herein by reference.

(g) Rights of Tenants. The Beneficiary shall have the right and option to commence a civil action to foreclose this Deed of Trust and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Property having an interest in the Property prior to that of the Beneficiary. The failure to join any such tenant or tenants of the Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by the Trustor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) Option of Beneficiary to Subordinate. At the option of the Beneficiary, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent

domain award) to any and all leases of all or any part of the Property upon the execution by the Beneficiary of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Property are situated.

(i) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Beneficiary a mortgagee-in-possession in the absence of the actual taking of possession of the Property by the Beneficiary pursuant to this Deed of Trust.

(j) Relationship of Beneficiary and Trustor. The Beneficiary shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of the Trustor or of any lessee, operator, concessionaire or licensee of the Trustor in the conduct of their respective businesses, and, without limiting the foregoing, the Beneficiary shall not be deemed to be such partner, joint venturer, agent or associate on account of the Beneficiary becoming a mortgagee-in-possession or exercising any rights pursuant to this Deed of Trust, any of the other Loan Documents, or otherwise. The relationship of the Trustor and the Beneficiary hereunder is solely that of debtor/creditor.

(k) Time of the Essence. Time is of the essence of the payment by the Trustor of all amounts due and owing to the Beneficiary under the Note and the other Loan Documents and the performance and observance by the Trustor of all terms, conditions, obligations and agreements contained in this Deed of Trust and the other Loan Documents.

(l) No Merger. The parties hereto intend that the Deed of Trust and the lien hereof shall not merge in fee simple title to the Property, and if the Beneficiary acquires any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by the Beneficiary as evidenced by an express statement to that effect in an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title and this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title.

(m) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to \$14,436,000; provided, however, in no event shall the Beneficiary be obligated to advance funds in excess of the face amount of the Note.

(n) Status of Property. For purposes of *Utah Code Annotated* § 57-1-25 and *Utah Code Annotated* § 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.

(o) Integration. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE

OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

(p) CONSENT TO JURISDICTION. TRUSTOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY TRUSTOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS SECURITY INSTRUMENT SHALL BE LITIGATED IN THE COURTS OF THE STATE OF COLORADO SITTING IN THE CITY AND COUNTY OF DENVER, COLORADO, AND THE UNITED STATES DISTRICT COURT FOR COLORADO OR, IF BENEFICIARY INITIATES SUCH ACTION, ANY COURT IN WHICH BENEFICIARY SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. TRUSTOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY BENEFICIARY IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO TRUSTOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS DEED OF TRUST. TRUSTOR WAIVES ANY CLAIM THAT THE CITY AND COUNTY OF DENVER, COLORADO OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD TRUSTOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, TRUSTOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY BENEFICIARY AGAINST TRUSTOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR TRUSTOR SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY BENEFICIARY OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY BENEFICIARY OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND TRUSTOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(q) WAIVER OF JURY TRIAL. TRUSTOR HEREBY ACKNOWLEDGES THAT THE TIME AND EXPENSE REQUIRED FOR TRIAL BY JURY OF ANY CONTROVERSY RELATED IN ANY WAY TO THIS DEED OF TRUST WOULD EXCEED THE TIME AND EXPENSE REQUIRED FOR A BENCH TRIAL, AND HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY AND WAIVES ANY BOND OR

**SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS
WAIVER, BE REQUIRED OF BENEFICIARY.**

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IN WITNESS WHEREOF, the Trustor has executed and delivered this Construction Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents the day and year first above written.

LEHI HOTEL PARTNERS I, LLC,
a Utah limited liability company

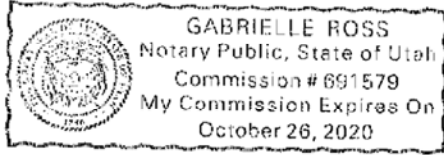
By: 
Nathan Ricks, Manager

By: 
Kevin Garn, Manager

(Signature Page to Deed of Trust,
Security Agreement, Fixture Filing and Assignment of Leases and Rents)

STATE OF UTAH)
)
)
COUNTY OF DAVIS)

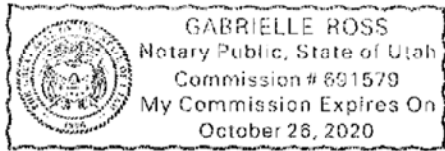
On this 22 day of October 2018, before me Gabrielle Ross, a notary public, personally appeared Nathan Ricks, the Manager of LEHI HOTEL PARTNERS I, LLC, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



Gabrielle Ross
NOTARY PUBLIC
(Notary Seal) 10/20/2020

STATE OF UTAH)
)
)
COUNTY OF DAVIS)

On this 22 day of October 2018, before me Gabrielle Ross, a notary public, personally appeared Kevin Garn, the Manager of LEHI HOTEL PARTNERS I, LLC, a Utah limited liability company, on behalf of said limited liability company, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.



Gabrielle Ross
NOTARY PUBLIC
(Notary Seal) 10/20/2020

EXHIBIT A**LEGAL DESCRIPTION OF LAND**

Beginning at a point which is East 2673.23 feet and South 486.55 feet from the Southwest corner of Section 31, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence South 44°29'47" East 188.42 feet; thence Southerly 23.43 feet along the arc of a 15.00 foot radius curve to the right, the chord of which bears South 00°15'24" West 21.12 feet; thence Southwesterly 54.26 feet along the arc of a 240.00 foot radius curve to the left, the chord of which bears South 38°31'59" West 54.15 feet; thence South 32°03'22" West 163.49 feet; thence Westerly 23.56 feet along the arc of a 15.00 foot radius curve to the right, the chord of which bears South 77°03'11" West 21.21 feet; thence Westerly 258.14 feet along the arc of a 815.00 foot radius curve to the left, the chord of which bears North 67°01'25" West 257.06 feet; thence Northeasterly 50.27 feet along the arc of a 105.00 foot radius curve to the right, the chord of which bears North 33°50'32" East 49.79 feet; thence North 47°33'28" East 295.61 feet to the point of beginning.

Together with interest in and to those certain easements created pursuant to the Master Declaration of Protective Covenants, Conditions and Restrictions for BAK Commercial/Retail Development, Lehi City, Utah County, State of Utah filed for record under Entry No. 97759:2001.

PROPERTY ADDRESS OF LAND:

1776 West Ashton Blvd.
Lehi, Utah

PERMANENT TAX IDENTIFICATION NUMBER:

12: 029: 0051 and 12: 029: 0052

EXHIBIT B
PERMITTED EXCEPTIONS

PART I

1. Taxes for the year 2018, have been paid in the amount of \$9,468.11 (Tax I.D. 12-029-0051)

Taxes for the year 2018, have been paid in the amount of \$1,751.89 (Tax I.D. 12-029-0052)

(NOTE: as of the effective date of this policy said charges are current)

2. Said property is located with the boundaries of Lehi City, Lehi Metro Water District, Utah County, Utah Valley Dispatch Special Service District and is subject to all assessments and service charges thereunder.

(NOTE: as of the effective date of this policy said charges are current)

3. Resolution No. 02-05-00.4, to create Lehi City, Utah Special Improvement District No. 2000-1, recorded May 18, 2000, as Entry No. 39440:2000, of the official records of UTAH, County Recorders Office.

[\(view\)](#)

4. Ordinance No. 02-13-01.7, adopting the Thanksgiving Point Amended Project Area Plan, recorded March 20, 2001, as Entry No. 25269:2001, of the official records of UTAH, County Recorders Office.

[\(view\)](#)

5. Resolution No. 2008-126 establishing the Utah Valley Dispatch Special Service District, recorded September 30, 2008, as Entry No. 107509:2008, Utah County Recorder's Office.

Certificate of Creation of the Utah Valley Dispatch Special Service District, recorded October 22, 2008, as Entry No. 114949:2008, Utah County Recorder's Office.

[\(view\)](#)

6. Restrictive Covenants (deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or nation origin to the extent such covenants, conditions, or restrictions violate 42USC 3604c), Recorded September 26, 2001, as Entry No. 97759:2001, UTAH County Recorder's

[\(view\)](#)

(Continued)

File No. B312

Policy No.

Affidavit to correct a clerical error, recorded February 25th, 2004, as Entry No. 20757:2004, of the official records of UTAH, County Recorders Office.

[\(view\)](#)

Amendment to Restrictive Covenants, Recorded February 25, 2004, as Entry No. 20758:2004, UTAH County Recorder's Office.

[\(view\)](#)

7. Right of Way Line Boundary Letter, filed by the Utah Department of Transportation, recorded November 15th, 1999, as Entry No. 120383:1999, of the official records of UTAH, County Recorders Office.
[\(view\)](#)
8. Subject to Controlled Access as shown by certain Warranty Deeds wherein The State Road Commission of Utah was conveyed land running through Section 6, Township 5 South Range 1 East, Salt Lake Base and Meridian, recorded with the Utah County Recorder's Office as Entry No. 9258:1971; 8600:1961
9. Easement in favor of State Road Commission of Utah, recorded September 16th, 2000, as Entry No. 72577:2000, of the official records of UTAH, County Recorders Office.
[\(view\)](#)
10. Easement in favor of State Road Commission of Utah, recorded September 15th, 2000, as Entry No. 72578:2000, of the official records of UTAH, County Recorders Office.
[\(view\)](#)
11. Easement in favor of State Road Commission of Utah, recorded September 15th, 2000, as Entry No. 72579:2000, of the official records of UTAH, County Recorders Office.
[\(view\)](#)
12. Easements, Reservations, Restrictions, Notes and All Matters, as shown on the official recorded plat of the Ashton Blvd Road Dedication Plat recorded November 2, 2015 as Entry No. 99530:2015.
13. The effect of the Utah Department of Transportation Right of Entry and Occupancy Agreement, recorded January 8, 2018, as Entry No. 2485:2018, of the official records of UTAH, County Recorders Office.
[\(view\)](#)

Note: The Above Document also contained a Quit Claim Deed to the Utah Department of Transportation and a Easement in favor of the Utah Department of Transportation.

(Continued)

File No. 8312

Policy No.

14. Easement and Maintenance Agreement between Lehi Hotel Partners I, LLC a Utah limited liability company and T-Stat One, LLC a Utah limited liability company, recorded _____, as Entry No. _____ of the official records of UTAH, County Records Office.
15. Any and all unrecorded rights or claims in the subject property of which notice is given by virtue of the following items disclosed by that certain Survey prepared by Trans Engineering, having been certified under the date of September 20th, 2018, by Travis Trane, a Registered Land Surveyor No. VS Studio, LLC to wit:
 - a) Telecom Box, CATV Box, Power Box, Existing Storm Drain and Irrigation Structure, Blow Off, Comcast Box along the Northeastly property line as shown on the survey
 - b) Telecom Box, Comcast Box, ELI Box, along the Southeastly property line as shown on the survey
 - c) Sewer Clean out and Sewer Line running through the Southwestly portion of the property as shown on the survey
 - d) Storm Drain and Storm Drain Lined running across the Northwestly portion of the property as shown on the survey