

Jeffery Smith

Utah County Recorder

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RECORDED FOR North American Title - Salt Lake City

ELECTRONICALLY RECORDED

WHEN RECORDED, RETURN TO:

Nicole C. Evans  
Ballard Spahr LLP  
201 South Main Street, Suite 800  
Salt Lake City, UT 84111-2221

Loan No. 726362701

Tax Parcel Nos. 39-258-0001; 39-258-0002;  
39-258-0003; 39-258-0004;  
39-258-0005; 39-258-0006;  
39-258-0007; 39-258-0010

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

THIS CONSTRUCTION LOAN DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is dated as of the 21st day of July, 2017, but made and entered into effective as of the 25<sup>th</sup> day of July, 2017, by and among COTTONWOOD GENEVA, LLC, a Delaware limited liability company ("Trustor"), in favor of FIRST AMERICAN TITLE INSURANCE COMPANY ("Trustee"), for the benefit of AMERICA FIRST FEDERAL CREDIT UNION ("Beneficiary").

RECITALS:

- A. Trustor is the owner of fee simple title in and to certain real property located in Utah County, Utah, as more particularly described on Exhibit "A" attached to and incorporated by reference in this Deed of Trust (the "Property").
- B. Trustor applied to Beneficiary for financing in the maximum principal amount of TWELVE MILLION AND 00/100 DOLLARS (\$12,000,000.00), to be secured by the Property.
- C. Beneficiary has committed to extend the financing to Trustor, provided that Beneficiary obtains a first position deed of trust lien against the Property.

NOW, THEREFORE, upon the terms, covenants and conditions set forth in this Deed of Trust, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, TRUSTOR HEREBY CONVEYS AND WARRANTS TO TRUSTEE, IN TRUST, WITH POWER OF SALE, and hereby grants to Beneficiary, as a secured party, a security interest in the following described real and personal property:

**GRANTING CLAUSE I:  
REAL PROPERTY**

All right, title, interest and estate of Trustor in and to the Property.

GRANTING CLAUSE II:  
ASSIGNED CONTRACTS

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to the following to the extent applicable to the Property or the Improvements (as defined in Article I of this Deed of Trust):

(1) All contracts and agreements relating to the planning, design, engineering, or architecture of the Improvements;

(2) All surveys, drawings, models, plans, specifications, budgets, cost estimates, bid packages, bids, and other related documents relating to the development or construction of the Improvements;

(3) All rights of Trustor as developer, declarant or otherwise under any restrictive covenants, planned lot development, condominium or other documents relating to the design, construction, use and sale of improvements on the Property;

(4) All contracts and agreements relating to the installation, construction or demolition of any of the Improvements, including all retainages, payment and performance bonds, performance escrows, and reimbursement agreements with any governmental agency(ies) described in or required by any of the foregoing;

(5) All contracts and agreements relating to the development of the Property or the Improvements, including all contracts with government authorities granting entitlements or development or reimbursement rights with respect to the Property, appraisals, soils reports, feasibility studies, environmental assessment reports, and engineering, mechanical and wetlands reports;

(6) All contracts and agreements between Trustor and any utility company, water company or user association, or telecommunications company for the purpose of: (a) furnishing electricity, natural gas or oil, telephone, sewer, water, cable television, internet or other such services to the Property; (b) providing hook-ups, connections, lines or other necessary laterals or tie-ins to the Property and the Improvements constructed or to be constructed on the Property, including any "will serve" letters benefiting the Property; or (c) granting any such utility or other company access to the Improvements or to space in or on the Property or the Improvements to provide service to the Property;

(7) All contracts and leases granted by Trustor, as lessor, to any individual or entity for the use of any areas on the Improvements or the Property for the placement of telecommunications equipment, antennae or transmission devices, or for the placement of billboards, signs or other advertising media;

(8) All contracts and agreements for marketing, leasing, advertising, use, or sale of the Property, the Improvements or any portion of either of them;

(9) All contracts and agreements relating to the management of the Property and the Improvements, or with any franchisor relating to the operation or use of the Improvements;

(10) All security deposits, connection fees, prepayments, reservation fees and other payments made by Trustor with respect to any of the foregoing; and

(11) All modifications, amendments, substitutions and replacements of any of the foregoing.

GRANTING CLAUSE III:  
AWARDS

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property or of any Improvements now or hereafter situated thereon or of any estate or easement in the Property (including any awards for change of grade of streets); and

(2) The proceeds of insurance paid on account of partial or total destruction of the Improvements now or hereafter located upon the Property or any portion thereof (regardless of whether or not Trustor is required to carry such insurance under this Deed of Trust or any other Loan Document).

GRANTING CLAUSE IV:  
CONSTRUCTION MATERIALS

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all building materials, supplies and inventories acquired by Trustor with proceeds of the Loan (as defined in Article I of this Deed of Trust) and delivered to the Property for use in connection with or for incorporation into the Improvements on the Property.

GRANTING CLAUSE V:  
EQUIPMENT

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All machinery, equipment, goods, supplies, appliances, floor coverings, furnishings, window coverings, security systems, communications systems and equipment, artwork, light fixtures, and other articles of tangible personal property of Trustor used or acquired for use on the Property;

(2) All attachments, accessories and accessions thereto and all substitutions and replacements thereof and all parts therefor.

GRANTING CLAUSE VI:  
FIXTURES AND INTERESTS

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All buildings, improvements, renovations, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments upon, and all renewals and replacements of, any of the foregoing and which are owned or acquired by Trustor

and which are now or hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property;

(2) All easements, licenses, streets, ways, alleys, roads, passages, rights-of-way (whether now owned or hereafter acquired by Trustor and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Property or any portion of the Property; and

(3) All decreed and undecreed water or water rights, ditches or ditch rights, reservoirs or reservoir rights, well, spring, seepage and pond rights, and all other types of rights to the ownership of water, tributary, nontributary and not nontributary, which are underlying, appurtenant to or customarily or historically used upon or associated with the Property, all water and ditch company stock relating to the Property, and all rights to naturally occurring oil, gas, minerals, geothermal resources, timber and crops under, through, upon, or appurtenant to the Property.

GRANTING CLAUSE VII:  
INTANGIBLES

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All general intangibles of every nature and intellectual property owned by Trustor pertaining to the Property or the Improvements including, without limitation, any software, and any trade names, service names, trademarks, service marks, marketing materials, telephone numbers, domain names and any other names, numbers or materials used to identify, advertise or promote the Property or the Improvements; and

(2) All now existing or hereafter acquired chattel paper, accounts, deposit accounts, payment intangibles, letter of credit rights, supporting obligations, good will and other intangible personal property owned by Trustor and pertaining to the Property or the Improvements.

GRANTING CLAUSE VIII:  
PERMITS AND LICENSES

All right, title, interest and estate of Trustor, now existing or hereafter acquired, in and to all permits, franchises, privileges, grants, consents, licenses, authorizations and approvals heretofore or hereafter granted by the United States, by the State of Utah or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities (including, without limitation, the City of Vineyard, Utah County, Utah) to or for the benefit of Trustor and utilized in connection with the development, construction or operation of the Improvements.

GRANTING CLAUSE IX:  
RENTS, ISSUES, ETC.

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to:

(1) All sales proceeds, rents, subrents, issues, royalties, income and profits of and from the Property or any portion of the Property;

(2) All cleaning, security and other deposits and any prepaid rent held or received by Trustor from tenants pursuant to or under the terms of any leases affecting the Property; and

(3) All rights of Trustor under guaranties made by third-parties with respect to leases affecting the Property, including, but not limited to, the right to enforce and receive payment under such guaranties.

GRANTING CLAUSE X:  
TENEMENTS AND HEREDITAMENTS

All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all and singular the tenements, hereditaments, rights, privileges and appurtenances belonging, relating, or in any way appertaining to any of the Property, or any portion of the Property, or which shall hereafter in any way belong, relate or in any way appertain thereto (including, without limitation, any and all development rights, air rights or similar or comparable rights), and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims and demands of every nature whatsoever, at law or in equity, which Trustor may have or may hereafter acquire in and to the Property or any portion of the Property.

GRANTING CLAUSE XI:  
PROCEEDS AND PRODUCTS

All cash and noncash proceeds and all products of any of the foregoing, including, without limitation, insurance proceeds.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD, the above-granted and described Trust Estate unto and for the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, this grant is made upon the express condition that, if Trustor pays to Beneficiary the Obligations (as hereinafter defined) at the time and in the manner provided in the Loan Documents and performs the Obligations in the time and manner set forth in the Loan Documents, the estate hereby granted will cease, terminate and be void. Furthermore, upon written request of Beneficiary stating that all Obligations have been satisfied in full and upon payment by Trustor of Beneficiary's and Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

ARTICLE I  
DEFINITIONS

The following terms used in this Deed of Trust shall have the meanings set forth below:

"Access Laws" has the meaning given to such term in the Loan Agreement.

"Environmental Indemnity" means that certain Certificate and Indemnity Regarding Hazardous Substances dated the same date as this Deed of Trust, made by Trustor and Guarantor to and

for the benefit of Beneficiary, relating to the Property, together with any and all amendments and modifications thereto.

“Event of Default” has the meaning given to such term in the Loan Agreement.

“Hazardous Substances” has the meaning given to such term in the Environmental Indemnity.

“Impositions” means all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal or other charges or impositions of any kind or nature whatsoever (including, without limitation, charges and assessments on water or water stocks used on or with the Property and levies or charges resulting from covenants, conditions and restrictions affecting the Trust Estate) which are assessed or imposed upon the Trust Estate, or become due and payable, and which create or may create a lien upon the Property or any portion of the Property, equipment or other facility used in the construction, renovation, operation or maintenance of the Trust Estate.

“Improvements” means the improvements now or hereafter installed or constructed on the Property in accordance with the Plans (as defined in the Loan Agreement).

“Loan” means the financing facility advanced or to be advanced by Beneficiary to or for the account of Trustor in the maximum principal amount of TWELVE MILLION AND 00/100 DOLLARS (\$12,000,000.00).

“Loan Agreement” means that certain Construction Loan Agreement, dated the same date as this Deed of Trust, by and between Trustor, as borrower, and Beneficiary, as lender, relating to the Loan, together with any and all amendments and modifications thereto.

“Loan Documents” means the Loan Agreement, the Note, this Deed of Trust, the Assignment of Lessor’s Interest in Leases, the Assignment of Construction Contracts and Related Contracts and Plans and Specifications, the Guaranty, all other deeds of trust (if any) given by or for the benefit of Trustor to Beneficiary as security for the Note, and any and all other documents between Trustor and Beneficiary evidencing or securing the Loan, as the same may now be or may hereafter be amended or modified; provided, however, for purposes of this Deed of Trust, the term “Loan Documents” shall exclude the Environmental Indemnity.

“Lot” means each individual platted lot located within the Property, as shown on a recorded plat for the Property.

“Note” means the Construction Loan Promissory Note, dated the same date as this Deed of Trust, in the maximum principal amount of TWELVE MILLION AND 00/100 DOLLARS (\$12,000,000.00), executed by Trustor, as maker, in favor of Beneficiary, as payee, together with any and all amendments and modifications thereto.

“Obligations” means the obligations of Trustor described in Section 2.1 of this Deed of Trust, the payment and performance of which are secured by this Deed of Trust.

“Permitted Encumbrances” means those liens, encumbrances and matters affecting the Property listed on Exhibit “B” attached to and incorporated by reference in this Deed of Trust, and the liens and security interests which are either established or expressly permitted under this Deed of Trust or the other Loan Documents.

“Personalty” means all tangible and intangible personal property of Trustor listed in Granting Clauses II through XI of this Deed of Trust used in connection with the Property or incorporated into the Improvements.

“Property” means that certain real property situated in Utah County, Utah, described in Recital A above and referred to in Granting Clause I of this Deed of Trust, as more particularly described on Exhibit “A” attached to this Deed of Trust.

“Trust Estate” means all of the items, documents, interests and properties referred to in Granting Clauses I through XI of this Deed of Trust.

Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

ARTICLE II  
OBLIGATIONS SECURED

2.1 Obligations. This Deed of Trust is given for the purpose of securing the following Obligations of Trustor:

(a) The payment and performance of each and every obligation of Trustor, evidenced by the Note, including, without limitation, the payment of principal of and interest on the Loan, and any and all obligations of Trustor under the Note for default interest, late fee charges, additional advances, and other costs and fees expended by Beneficiary to protect its security position against the Property, including, but not limited to, foreclosure costs, attorney fees and related costs;

(b) The payment and performance of each and every agreement and obligation of Trustor under this Deed of Trust and under any other instrument given to evidence or further secure the payment and performance of any obligation of Trustor under the Loan Agreement and all of the other Loan Documents; and

(c) The payment and performance of any obligation of Trustor under the Loan Documents for sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Deed of Trust, together with interest thereon as provided in the Loan Agreement.

Notwithstanding the foregoing, this Deed of Trust shall not secure Trustor’s obligations under the Environmental Indemnity.

2.2 Extensions and Renewals. Any extensions of, renewals of, modifications of, or additional advances of the Loan, or any of the Obligations evidenced by the Note, regardless of the extent or subject matter of any such extension, renewal, modification or additional advance, shall be secured by this Deed of Trust.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES

3.1 Property. Trustor represents and warrants to Beneficiary as follows:

(a) Except for the Permitted Encumbrances, Trustor is the owner of fee simple title in and to the Property;

(b) Trustor possesses all requisite power and authority to execute and deliver this Deed of Trust;

(c) Except for the Permitted Encumbrances, Trustor shall defend title to the Property against all claims and demands whatsoever;

(d) Trustor has not conveyed or encumbered the Property, other than the Permitted Encumbrances, and the Property is free and clear of and from any and all liens, claims, encumbrances, restrictions, encroachments and interests whatsoever, in favor of any third party, other than the Permitted Encumbrances;

(e) The lien created by this Deed of Trust upon the Property is a valid and subsisting first position lien against the Trust Estate, subject only to the Permitted Encumbrances; and

(f) Any and all obligations incurred by Trustor in connection with the acquisition of all or any portion of the Property are current and without default on the part of Trustor.

3.2 Personalty. Trustor represents and warrants to Beneficiary as follows:

(a) Trustor is the owner, or upon acquisition thereof, will be the owner of all Personalty used by Trustor in connection with or incorporated into the Improvements on the Property;

(b) Trustor has not conveyed or encumbered the Personalty, other than the Permitted Encumbrances, and the Personalty is, or upon acquisition of title thereto by Trustor will be, free and clear from any and all liens, claims, encumbrances, restrictions on title, charges and security interests in favor of any third party other than the Permitted Encumbrances;

(c) Trustor will not create, permit or suffer to exist, any lien, claim, encumbrance, restriction, charge or security interest in or to the Personalty (other than the Permitted Encumbrances or any restriction as may be necessary or appropriate in the ordinary course or if and to the extent imposed or required by applicable law) without the prior written consent of Beneficiary; and

(d) Trustor shall defend the Personalty and take such other action as is necessary to remove any lien, claim, encumbrance, restriction, charge or security interest in or to the Personalty superior to the security interest in Beneficiary created hereunder, except the Permitted Encumbrances or as otherwise expressly permitted under the Loan Documents.

ARTICLE IV  
MAINTENANCE OF TRUST ESTATE

Trustor shall: (a) maintain the Trust Estate at all times in good condition and repair; (b) except with the prior written permission of Beneficiary, not commit any waste of the Trust Estate or remove, damage, demolish or structurally alter any of the Improvements now on the Property, or to be constructed on the Property hereafter, except in accordance with the Plans; (c) complete promptly and in good and workmanlike manner the Improvements, or any other improvements on the Property, which may for any reason be constructed; (d) restore promptly and in good and workmanlike manner any of the Improvements, or any portion of the Property, which may for any reason be damaged or destroyed; (e)



comply at all times with all laws, ordinances, regulations, covenants and restrictions in any manner affecting the Trust Estate; (f) not commit or knowingly permit any act upon the Trust Estate in violation of law; and (g) do all acts which by reason of the character or use of the Trust Estate may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

ARTICLE V  
INSURANCE

5.1 Insurance. Trustor or Trustor's general contractor, as applicable, shall secure and at all times maintain and promptly pay when due all premiums for the following types of insurance:

(a) During any period of construction, builder's risk extended coverage insurance against loss or damage by fire and extended coverage and shall include all risk insurance for physical loss or damage including, without duplication of coverage, earthquake, theft, vandalism, malicious mischief, collapse, falsework and temporary buildings and debris removal, including demolition occasioned by enforcement of applicable legal requirements, and other risks from time to time included under extended coverage policies in an amount not less than one hundred percent (100%) of the full replacement value of the Improvements. All policies secured and carried in accordance with this Section 5.1(a) shall contain the "Replacement Cost Endorsement," a lender's loss payable endorsement 438 BFU naming Beneficiary as loss payee, and shall name Beneficiary.

(b) During any period of construction, workmen's compensation insurance against liability arising from claims of workmen with respect to and during the period of any work on or about the Property.

(c) Following any period of construction, insurance against loss or damage to the Property, the Improvements and any Personalty to the extent insurable used in connection with the Property by fire, vandalism, malicious mischief, and any of the risks covered by insurance of the type now known as "Causes of Loss-Special Form" or comparable coverage in an amount not less than One Hundred Percent (100%) of the full replacement value of the Improvements. Such insurance policy or policies shall contain the "Replacement Cost Endorsement," a lender's loss payable endorsement 438 BFU naming Beneficiary as loss payee, and shall name Beneficiary.

(d) If the Property is located in a special flood hazard area as identified by the Federal Emergency Management Agency, federally subsidized flood insurance covering the risk of damage to the Improvements and Personalty located or to be constructed on the Property caused by flooding in the total amount of the Loan or for the maximum amount of subsidized insurance available, whichever is less. In lieu of such flood insurance, Trustor shall submit to Beneficiary evidence satisfactory to Beneficiary that no part of the Property is, or will be, within an area designated as a flood hazard area by the Federal Emergency Management Agency.

(e) Commercial General Liability insurance applicable to the Trust Estate in the minimum amounts of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such liability insurance shall be issued by one or more insurance companies reasonably satisfactory to Beneficiary and satisfying the requirements set forth in Section 5.2 below and shall name Beneficiary as an additional insured.

(f) If owned by Trustor, equipment and machinery insurance covering vessels, machinery, piping, and other equipment, provided the Improvements contain equipment of such nature, and insurance against loss of use arising from any such breakdown, in such amounts as are reasonably satisfactory to Beneficiary.

(g) Such other insurance and in such amounts as may from time to time reasonably be required by Beneficiary against the same or other hazards.

All policies of builder's risk and other casualty and bodily injury insurance required by the terms of this Deed of Trust shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of the insurance. The policies shall provide that the insurer will waive all rights of set-off, counterclaim or deduction against Trustor.

5.2 Policies and Premiums. All policies of insurance shall be issued by insurance companies which have a company rating of not less than "A" and a financial performance rating of not less than "7" by A.M. Best Co. in "Best's Insurance Reports." All policies of commercial liability and other casualty insurance shall have included therein a standard mortgagee protection clause. Trustor shall furnish Beneficiary with a copy of all policies of required insurance or a certificate of insurance together with a true and correct copy of each such policy. All such policies shall contain a provision that such policies will not be cancelled or amended to restrict or reduce coverage without at least thirty (30) days prior written notice to Beneficiary. If Beneficiary consents to Trustor providing any of the required insurance through blanket policies carried by Trustor and covering more than one location, then Trustor shall cause the insurance company to furnish Beneficiary with an endorsement to such policy which sets forth the coverage, the limits of liability, the name of the carrier, the policy number, the expiration date and a statement that the insurance company will not cancel, restrict or reduce the coverage evidenced by the endorsement without first affording Beneficiary at least thirty (30) days prior written notice. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the evidence of insurance required by Section 5.1, Beneficiary may, but without any obligation to do so, procure such insurance for such risks covering Beneficiary's interest, and Trustor shall pay all premiums thereon promptly upon demand by Beneficiary. If Trustor fails to pay any premium after demand by Beneficiary, Beneficiary, at Beneficiary's option, may advance any sums necessary to maintain and to keep in force such insurance. Any sums so advanced, together with interest thereon at the Default Interest Rate as provided for in the Note, shall be secured by this Deed of Trust.

5.3 Occurrence and Notice of Casualty. In the event of loss or damage to the Trust Estate, or any portion of the Trust Estate, Trustor shall immediately give notice thereof to Beneficiary. Beneficiary may, but without any obligation to do so, make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary. The insurance proceeds or any part thereof shall be deemed part of the security for the Obligations and provided no Event of Default is occurring or shall be continuing shall be disbursed to Trustor in accordance with Section 3.2 of the Loan Agreement for the cost of restoring or repairing the portion of the Trust Estate damaged, provided that any insurance proceeds not so applied and/or disbursed may be applied by Beneficiary, at Beneficiary's option, to reduce the indebtedness secured by this Deed of Trust (whether or not then due and payable). Except to the extent that insurance proceeds are received by Beneficiary and applied to the indebtedness secured by this Deed of Trust, nothing herein contained shall be deemed to excuse Trustor from repairing or restoring the Trust Estate to substantially the same condition as existed immediately prior to such damage as provided in Article IV of this Deed of Trust or restoring all damage or destruction to the Trust Estate, regardless of whether there are insurance proceeds available or whether any such proceeds are sufficient in amount. The application or release by

Beneficiary of any insurance proceeds shall not cure or waive any Event of Default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

5.4 Disposition of Policies on Foreclosure. In the event Beneficiary exercises the power of sale provisions of Section 11.5 of this Deed of Trust or takes any other transfer of title or assignment of the Trust Estate in extinguishment in whole or in part of the Obligations pursuant to this Deed of Trust, all right, title and interest of Trustor in and to the policies of insurance required by Section 5.1, shall inure to the benefit of and pass to the successor in interest of Trustor or the purchaser or grantee of the Trust Estate.

## ARTICLE VI INDEMNIFICATION AND OFF-SET

6.1 Indemnification by Trustor. Trustor hereby indemnifies and holds Beneficiary harmless in accordance with the following:

(a) If Beneficiary is made a party defendant to any litigation (except litigation wherein Trustor asserts a claim against Beneficiary and prevails) concerning this Deed of Trust or the Trust Estate or any part of the Trust Estate or interest therein, or the occupancy thereof by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from any and all liability by reason of such litigation, including reasonable attorney fees and costs incurred by Beneficiary in any such litigation, whether or not the litigation is prosecuted to judgment, except if and to the extent the same is caused solely by the gross negligence or willful misconduct of Beneficiary. If, following the occurrence and continuance of an Event of Default, Beneficiary commences an action against Trustor to enforce any of the material terms, covenants or conditions of this Deed of Trust or because of the breach by Trustor of any of the material terms, covenants or conditions, or for the recovery of any sum secured hereby, Trustor shall pay the reasonable attorney fees and costs actually incurred by Beneficiary in such action. The right to such attorney fees and costs shall be deemed to have accrued on the commencement of such action (to the extent Beneficiary has then incurred the same), and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any material term, covenant or condition of this Deed of Trust, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder and in the event of such employment following any such breach by Trustor, Trustor shall pay Beneficiary an amount equal to the amount of attorney fees and costs actually incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of such breach.

(b) If Beneficiary is held liable or could be held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor or materials furnished in connection with or arising from the construction, repair or reconstruction of any of the Improvements (except if and to the extent arising solely from the gross negligence or willful misconduct of Beneficiary), then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorney fees and costs.

6.2 Off-Set. All sums payable by Trustor under this Deed of Trust shall (unless otherwise specifically provided in this Deed of Trust or the other Loan Documents) be paid when due without notice, demand, counterclaim (other than compulsory counterclaims), set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or

similar taking of the Trust Estate or any part thereof; (b) any restriction or prevention of or interference with any use of the Trust Estate or any part thereof; (c) any title defect or encumbrance (other than the Permitted Encumbrances) or any eviction from the Trust Estate or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (e) any claim which Trustor has or might have against Beneficiary; or (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Deed of Trust or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

#### ARTICLE VII IMPOSITIONS

7.1 Payment of Impositions. Subject to Section 7.3 and Section 7.5 of this Deed of Trust, Trustor shall pay, prior to delinquency, all Impositions. However, if, by law, any Imposition is payable, or may at the election of the taxpayer be paid in installments, Trustor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

7.2 Evidence of Payment. Subject to Section 7.3 and Section 7.5 of this Deed of Trust, Trustor shall, upon request by Beneficiary, furnish to Beneficiary, within thirty (30) days after the date upon which such Imposition is due and payable by Trustor, official receipts of the appropriate taxing authority (to the extent available), or other proof reasonably satisfactory to Beneficiary, evidencing the payments thereof.

7.3 Right to Contest. Trustor shall have the right, before any date set for forfeiture, whether at tax sale, foreclosure on a tax lien or otherwise, to contest or object to the amount, applicability or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in Section 7.1, unless Trustor has given prior written notice to Beneficiary of Trustor's intent so to contest or object to an Imposition, and unless, at Beneficiary's option: (a) Trustor shall demonstrate to Beneficiary's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Trust Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (b) Trustor shall furnish good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

7.4 Tax on Deed of Trust. If at any time after the date hereof there shall be assessed or imposed: (a) a tax or assessment on the Trust Estate in lieu of or in addition to the Impositions payable by Trustor; or (b) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations or upon payments on the Note (whether principal or interest); then all such taxes, assessments and fees shall be deemed to be included within the term "Impositions" as defined in Article I of this Deed of Trust, and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. Trustor shall have no obligation to pay any franchise, income, excess profits or similar tax levied on Beneficiary or on the Obligations secured hereby.

7.5 Reserves for Taxes and Insurance. In furtherance of Article V and Section 7.1 of this Deed of Trust and anything to the contrary herein notwithstanding, Trustor, upon request by

Beneficiary following the occurrence and during the continuance of an Event of Default, shall pay to Beneficiary, on the date monthly installments of accrued interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth of the annual Impositions reasonably estimated by Beneficiary to pay the installment of Impositions next due on the Trust Estate; and one-twelfth of the annual aggregate insurance premium on all policies of insurance required in Article V. Upon such request, Trustor shall thereafter cause all bills, statements or other documents relating to Impositions and insurance premiums to be sent to Beneficiary. Provided Trustor has deposited sufficient funds with Beneficiary pursuant to this Section 7.5, Beneficiary shall pay such amounts as may be due thereunder out of the funds so deposited with Beneficiary. If at any time and for any reason the funds deposited with Beneficiary pursuant to this Section 7.5 are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Nothing contained herein shall cause Beneficiary to be deemed a trustee of such funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 7.5. Beneficiary shall not be obligated to pay any interest on any sums held by Beneficiary pending disbursement or application hereunder, and Beneficiary may impound or reserve for future payment of Impositions and insurance premiums such portion of such payments as Beneficiary, in Beneficiary's absolute discretion, may deem proper. In the event that upon request from Beneficiary pursuant to this Section 7.5 Trustor fails to deposit with Beneficiary sums sufficient to pay fully such Impositions and insurance premiums at least thirty (30) days before delinquency thereof, Beneficiary, at Beneficiary's election, but without any obligation to do so, may advance any amounts required to make up the deficiency, which advances, if any, shall be secured by this Deed of Trust, and shall be repayable to Beneficiary, with interest from the date advanced, at the Default Interest Rate specified in the Note.

#### ARTICLE VIII ADDITIONAL COVENANTS

8.1 Payment of Utilities. Trustor shall pay when due all utility charges relating to the Trust Estate which may become a lien or charge against the Trust Estate or any portion thereof, for gas, electricity, water or sewer services furnished to the Trust Estate and all assessments or charges of a similar nature, whether public or private, affecting the Trust Estate or any portion thereof, whether or not such assessments or charges are liens thereon.

8.2 Defense of Title. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Trust Estate, or the rights or powers of Beneficiary or Trustee. If Trustor fails or refuses to so appear in and defend any such action or proceeding, then Beneficiary may elect to do so. Should Beneficiary so elect in good faith to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorney fees and costs, incurred by Beneficiary or Trustee.

8.3 Performance in Trustor's Stead. Should Trustor fail to make any payment or to do any act as provided in this Deed of Trust following the expiration of any notice and cure periods provided for herein or in any other Loan Document, then Beneficiary or Trustee, but without any obligation to do so, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Trust Estate for such purposes); (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (c) pay, purchase, contest or compromise any encumbrance, charge or lien which in the commercially reasonable judgment of either Beneficiary or Trustee appears to be superior to the lien of this Deed of Trust (other than the Permitted Encumbrances); and (d) in exercising any such powers, incur any liability, expend such reasonable

amounts as Beneficiary may deem necessary therefor, including cost of evidence of title, employment of attorneys, and payment of reasonable attorney fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the Principal Indebtedness secured by this Deed of Trust and shall accrue interest in accordance with the terms of the Note.

8.4 Repayment of Advances. Trustor shall immediately repay to Beneficiary all sums, other than Loan proceeds, with interest thereon as provided in the Note, which at any time may be paid or advanced by Beneficiary in connection with Beneficiary's exercise of its rights and remedies under this Deed of Trust or any of the other Loan Documents for the payment of insurance premiums, taxes, assessments, other governmental, municipal, or other charges or Impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary to maintain this Deed of Trust as a valid and subsisting lien upon the Trust Estate, to preserve and protect Beneficiary's interest in this Deed of Trust, or to preserve, repair or maintain the Trust Estate. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Deed of Trust.

8.5 No Removal of Fixtures. Trustor shall not, during the existence of this Deed of Trust and without the prior written consent of Beneficiary, remove from the Property any of the Improvements or any tangible items of Personalty, except in the ordinary course of Trustor's business and except to the extent replaced by items of comparable quality and value.

8.6 Further Assurance. Trustor shall execute, if necessary, and deliver to Beneficiary such further instruments, including, without limitation, Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may reasonably be required by Beneficiary to carry out more effectively the purposes of this Deed of Trust and to subject to the lien and encumbrance created or intended to be created hereby any property, rights or interests covered or intended to be covered by this Deed of Trust. Trustor hereby authorizes (to the extent such authorization is valid under applicable law) Beneficiary to file, without Trustor's signature, such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect or continue the perfection of the security interests created by this Deed of Trust.

8.7 No Further Encumbrances. Except for the Permitted Encumbrances and the lien and encumbrance of this Deed of Trust, Trustor shall not create, permit or suffer to exist, and, upon Beneficiary's request and at Trustor's expense, will defend the Trust Estate and take such other action as is necessary to remove any lien, claim, charge, security interest or encumbrance in or to the Trust Estate, or any portion of the Trust Estate, other than the Permitted Encumbrances.

8.8 No Conveyance of Property. Except for the sale of Lots, as contemplated by Section 8.13 of this Deed of Trust, Trustor shall not sell, convey or alienate the Property or any portion thereof, or any interest therein to any person or entity, without the prior written consent of Beneficiary. In the event Trustor shall sell, convey or alienate all or any portion of the Property, or any interest therein, in violation of the foregoing, or be divested of title to the Property in any manner, whether voluntarily or involuntarily, then the entire Principal Indebtedness of the Loan, as evidenced by the Note and the other Loan Documents, and all other Obligations secured by this Deed of Trust, irrespective of the maturity date expressed therein, at the option of Beneficiary, and without prior demand or notice, shall become immediately due and payable.

8.9 Application of Payments. If at any time during the term of this Deed of Trust Beneficiary receives or obtains a payment, installment or sum which is less than the entire amount then due under the Note secured by this Deed of Trust and any of the other Loan Documents, then Beneficiary shall, notwithstanding any instructions which may be given by Trustor, have the right to apply such

payment, installment or sum, or any part thereof, to such of the items or Obligations then due from Trustor or to Beneficiary as Beneficiary, in Beneficiary's sole discretion, may determine.

8.10 Hazardous Substances. Trustor has provided the representations, warranties and covenants regarding Hazardous Substances as set forth in the Environmental Indemnity, and Trustor will comply with the aforesaid covenants regarding Hazardous Substances.

8.11 Fixture Filing. This Deed of Trust shall be effective as a fixture filing from the date of recordation hereof in accordance with Section 70A-9a-502 of the Utah enactment of the Uniform Commercial Code. In connection therewith, the addresses of Trustor, as debtor ("Debtor"), and of Beneficiary, as secured party ("Secured Party"), are set forth below. The following address of Beneficiary, as the Secured Party, is also the address from which information concerning the security interest may be obtained by any interested party:

- (a) Name and address of Debtor: Cottonwood Geneva, LLC  
2750 E Cottonwood Parkway, Suite 560  
Cottonwood Heights, Utah 54121  
Attn: John F. West
- (b) Name and address of Secured Party: America First Federal Credit Union  
4646 South 1500 West, Suite 130  
Riverdale, Utah 84405  
Attn: Commercial Real Estate Department
- (c) Description of the types (or items) of property covered by this Fixture Filing: See pages 1 through 5 above.
- (d) Description of real estate subject to this Fixture Filing, to which the collateral is attached or upon which it is located: See Exhibit "A" hereto.

Some of the above described collateral is or is to become fixtures upon the above described real estate, and this Fixture Filing is to be filed for record in the public real estate records. This Deed of Trust secures an obligation secured by real property and any fixtures thereon and shall be governed by the provisions of Section 70A-9a-502 of the Utah enactment of the Uniform Commercial Code.

8.12 Access Laws. Trustor makes the following covenants with Beneficiary with respect to Access Laws:

- (a) Trustor and the Property shall at all times strictly comply with the requirements of all Access Laws (to the extent the Trustor and the Property are subject to Access Laws). Beneficiary may require a certificate of compliance from an architect, engineer or other third party acceptable to Beneficiary.

(b) Notwithstanding any provisions set forth herein or in any security instrument, Trustor shall not alter or permit any tenant or other person to alter the Property in any manner which would increase Trustor's responsibilities for compliance with the Access Laws without the prior written approval of Beneficiary. In connection with such approval, Beneficiary may require a certificate of compliance with the Access Laws from an architect, engineer or other party acceptable to Beneficiary.

(c) Trustor shall give prompt written notice to Beneficiary of the receipt by Trustor of any claims of violation of any of the Access Laws and of the commencement of any proceedings or investigations which relate to compliance with the Access Laws.

(d) Trustor shall indemnify and hold harmless Beneficiary from and against any and all claims, demands, damages, costs, expenses, losses, liabilities, penalties, fines and other proceedings, including, without limitation, reasonable attorney fees and expenses arising directly or indirectly from or out of or in any way connected with any failure of the Property to comply with the Access Laws. The obligations and liabilities of Trustor under this subsection shall survive any termination, satisfaction, assignment, judicial or non-judicial foreclosure proceeding, or delivery of a deed in lieu of foreclosure with respect to this Deed of Trust, any security instrument or the Property.

8.13 Partial Releases. The Loan Agreement provides that individual Lots may be released from the lien of this Deed of Trust upon compliance by Trustor of the conditions set forth in Section 2.11 of the Loan Agreement. Pursuant to and in accordance with Section 2.11 of the Loan Agreement, upon satisfaction of all of such conditions set forth therein, Beneficiary shall release the applicable Lot from the lien and encumbrance of this Deed of Trust by delivering to Trustor a duly executed and acknowledged release of the lien of this Deed of Trust with respect to such Lot in recordable form and UCC-3 releases of security interests, and any other documentation reasonably required to effect such release.

#### ARTICLE IX CONDEMNATION AWARDS

Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking for public improvements affecting the Trust Estate or any portion thereof. If the Trust Estate or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding following the occurrence and during the continuation of an Event of Default, Beneficiary shall be entitled: (1) to receive all compensation, awards and other payments or relief for such taking or condemnation; (2) at Beneficiary's option and in Beneficiary's own name, to commence, appear in and prosecute in Beneficiary's own name any action or proceeding relating to such taking or condemnation; and (3) to make any compromise or settlement in connection with any such taking or condemnation. All such compensation, awards, damages, causes of action, proceeds or other payments shall be deemed part of the security for the Obligations and are hereby assigned to Beneficiary. Beneficiary, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees incurred by Beneficiary in connection with such compensation, shall disburse any and all moneys so received by Beneficiary to Trustor in accordance with Section 3.2 of the Loan Agreement for the cost of restoring or repairing damage to the remaining Trust Estate, provided that any proceeds not so applied may be applied by Beneficiary, at Beneficiary's option, to reduce the indebtedness secured by this Deed of Trust (whether or not then due). The application or release by Beneficiary of any condemnation awards or other compensation shall not cure or waive any Event of Default or notice of default under this Deed of Trust or invalidate any act done pursuant to any such notice. Subject to the foregoing, Trustor shall execute and



deliver to Beneficiary such further assignments of such compensation, awards, damages, causes of action, proceeds or other payments as Beneficiary may from time to time commercially reasonably require.

ARTICLE X  
ASSIGNMENT OF RENTS AND LEASES

10.1 Assignment. As additional security for the Obligations secured by this Deed of Trust, Trustor hereby assigns, sells, transfers and conveys to Beneficiary during the continuance of this Deed of Trust, all contracts, leases, subleases and agreements relating to the sale, lease, sublease or use of the Lots or any portion of the Trust Estate or the Property, together with all sales proceeds, rents, subrents, issues, royalties, income and profits of and from the Trust Estate and all cleaning, security and other deposits held or received by Trustor from tenants pursuant to the terms of any leases affecting the Property. Until the occurrence of an Event of Default, Trustor may collect and use all such sales proceeds, rents, subrents, issues, royalties, income, profits and deposits, as they become due and payable, and may retain, use and enjoy the Trust Estate. Upon the occurrence and during the continuance of an Event of Default hereunder, Trustor's right to collect and use any of such proceeds shall cease, and Beneficiary, shall have the right, with or without taking possession of the Trust Estate, and either in person, by agent or through a court appointed receiver (Trustor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such sales proceeds, rents, subrents, issues, royalties, income, profits and deposits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall apply both before and after the exercise of the power of sale provisions of Section 11.5 of this Deed of Trust, the foreclosure of this Deed of Trust and throughout any period of redemption. The rights granted under this Section 10.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Trust Estate is in danger of being lost, removed or materially injured, or whether the Trust Estate or any other security is adequate to discharge the Obligations secured by this Deed of Trust. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power and authority of Beneficiary thereafter to collect the same. Nothing contained herein, nor Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, an affirmation by Beneficiary of any contractual interest, tenancy, lease, sublease, option or other interest in the Trust Estate, or an assumption of liability under, or a subordination of the lien or charge of this Deed of Trust to any contractual interest, tenancy, lease, sublease, option or other interest in the Trust Estate. All purchasers, tenants, lessees, sublessees and other persons who have any obligation to make any payment to Trustor in connection with the Trust Estate or any portion thereof are hereby authorized and directed to pay the rents, subrents, issues, royalties, income, profits and other payments payable by them with respect to the Trust Estate, or any portion thereof, directly to Beneficiary on the demand of Beneficiary. Beneficiary's receipt of such sales proceeds, rents, subrents, issues, royalties, income and profits shall be a good and sufficient discharge of the obligation of the purchaser, tenant, lessee, sublessee or other person concerned to make the payment connected with the amount so received by Beneficiary.

10.2 No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Trust Estate or any portion of the Trust Estate or the collection of sale proceeds, rents, subrents, issues, royalties, income, profits, tenant deposits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Trust Estate, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, any scheduled installments provided for in any of the Obligations secured by this Deed of Trust.

10.3 Indemnification. Trustor shall indemnify and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs and fees (including reasonable attorney fees and costs) arising from or related to receipt by Beneficiary of the sale proceeds, rents, subrents, issues, royalties, income and profits from the Trust Estate or any portion of the Trust Estate, except negligent or willful acts of Beneficiary.

ARTICLE XI  
EVENTS OF DEFAULT AND REMEDIES

11.1 Events of Default. The occurrence and continuance of any of the following events, if the same continue beyond the applicable cure period set forth in the Loan Documents, shall constitute an Event of Default under this Deed of Trust and the other Loan Documents:

(a) A material default or a material failure by Trustor to observe and perform any material term, covenant or condition to be observed or performed by Trustor contained in this Deed of Trust, the Loan Agreement, the Note or any of the other Loan Documents.

(b) Any representation or warranty of Trustor contained in this Deed of Trust, the Loan Agreement, the Note or any of the other Loan Documents was materially untrue when made.

11.2 Notice. Unless otherwise expressly provided by the terms of this Deed of Trust or the other Loan Documents, if an Event of Default shall occur, Beneficiary shall give written notice of such occurrence to Trustor as provided in the Loan Agreement.

11.3 Division of Trust Estate. Upon the occurrence and during the continuance of an Event of Default and if there are Hazardous Substances then present on the Property, Beneficiary, at Beneficiary's election and without any obligation to do so, may divide the Trust Estate into any number of parcels to facilitate the sale of the Trust Estate at a foreclosure sale. In connection therewith, Beneficiary may: (a) enter upon the Trust Estate and conduct or cause to be conducted inspections and surveys of the Trust Estate; (b) divide the Trust Estate in such manner as to segregate any Hazardous Substances into one or more distinct parcels; and (c) elect to sell at foreclosure sale only those portions of the Trust Estate that are not contaminated by or do not contain Hazardous Substances. Trustor hereby consents to such division and sale of the Trust Estate.

11.4 Acceleration; Notice. Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the option, in addition to any other remedy Beneficiary may have under the Loan Documents, to declare by notice to Trustor all sums secured by this Deed of Trust immediately due and payable and, prior to Trustor's payment of all such sums to Beneficiary, to have the Trust Estate sold in the manner provided herein. In the event Beneficiary desires to exercise the private power of sale provided hereunder, Beneficiary shall execute or cause Trustee to execute a written notice of default to cause the Trust Estate to be sold to satisfy the Obligations. Such notice shall be filed for record in Utah County, Utah.

11.5 Exercise of Power of Sale. Upon the occurrence and during the continuance of an Event of Default, after the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law and if directed by Beneficiary, Trustee, without demand on Trustor, except as provided by law, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to any statutory right of Trustor to direct the order in which the Property, if consisting of several known lots or parcels, shall be

sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed. In every such case, notice or postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale or as otherwise provided by law. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts relating to the exercise of the power of sale and the sale of the Trust Estate shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and reasonable attorney fees and costs actually incurred by Beneficiary, not to exceed the amount which may be provided for in the trust deed; (b) all sums expended or advanced by Beneficiary in conjunction with any provisions of this Deed of Trust, not then repaid, with accrued interest thereon from the date of expenditure, at the Default Interest Rate provided in the Note; (c) all other sums then secured by this Deed of Trust, including interest and principal on the Note; and (d) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the Clerk of the District Court of Utah County, Utah.

11.6 UCC Remedies. Beneficiary, with regard to the personal property interests subject to Section 9a of the Utah enactment of the Uniform Commercial Code, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Utah enactment of the Uniform Commercial Code, and any and all rights and remedies available to Beneficiary under any other applicable law. Beneficiary shall also have the right to dispose of the Personalty in connection with a foreclosure sale of the Property, whether the foreclosure sale is conducted by the Trustee in connection with the exercise of the private power of sale, or by a sheriff in connection with a judicial foreclosure of this Deed of Trust. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble the tangible items of Personalty and make the same available to Beneficiary at the Property.

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

11.8 Receiver. If an Event of Default occurs and is continuing, Beneficiary, as a matter of right and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction over the subject matter to appoint a receiver or receivers of the Trust Estate. Any such receiver or receivers shall have all the usual powers and duties of a receiver in like or similar cases and shall continue as such and may exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

11.9 No Remedy Exclusive. No remedy conferred upon or reserved to Beneficiary or Trustee under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and concurrent and shall be in addition to every other remedy given under this Deed of Trust, the Loan Agreement, the Note or the other Loan Documents, or now or hereafter existing at law or in equity or by statute. Beneficiary and Trustee may exercise their remedies singly, successively or concurrently against Trustor, any guarantor of Trustor's obligations under the Loan, the Trust Estate, and any other security for the Loan, at the sole and absolute discretion of Beneficiary. No delay or failure to exercise any right or power accruing upon any Event of Default shall

impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In addition, Beneficiary or Trustee may proceed concurrently against the Property and any guarantor, and may start, delay, postpone, cancel or recommence any foreclosure proceeding (whether judicial or non-judicial) while pursuing such guarantors, all at the sole and absolute discretion of Beneficiary. No act of Beneficiary or Trustee shall be construed as an election to proceed under any particular remedy available to Beneficiary or Trustee under any Loan Document to the exclusion of any other remedy in the same or in any other Loan Document, or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary or Trustee.

11.10 Cross Default. The occurrence and continuance of an Event of Default under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document, shall constitute a default under all such Loan Documents.

11.11 Rights of Trustee. Trustee shall be entitled to rely on the instructions given by Beneficiary to Trustee relating to the exercise of the private power of sale authorized by this Deed of Trust. Trustor hereby acknowledges and agrees that Trustee shall act at the direction of Beneficiary and that Trustee is entitled to rely on directions from Beneficiary as to whether to commence non-judicial foreclosure of the Trust Estate, when to record a notice of default, whether and when to issue a notice of trustee's sale, whether to postpone, conduct, cancel or re-notice any Trustee's sale, and how much to bid in behalf of Beneficiary at any Trustee's sale. Trustee shall have no authority, acting alone and without direction from Beneficiary, to commence, postpone, cancel, conduct or re-notice a Trustee's Sale, and may rely on information received from Beneficiary without independent investigation or confirmation of the facts as represented by Beneficiary. Trustor hereby waives any liability, damage, claim or cause of action Trustor might have or assert against Trustee resulting from or arising out of Trustee's good faith reliance on the directions Trustee receives from Beneficiary.

ARTICLE XII  
MISCELLANEOUS PROVISIONS

12.1 Notices. Except as otherwise provided in this Deed of Trust or in any other Loan Document, whenever Beneficiary or Trustor desires to give or serve any notice, demand, request or other communication with respect to this Deed of Trust or any other Loan Document, each such notice shall be in writing and shall be effective only if the notice is delivered by personal service, by nationally-recognized overnight courier, or by mail, postage prepaid, addressed as follows:

If to Trustor, to:	Cottonwood Geneva, LLC 2750 E Cottonwood Parkway, Suite 560 Cottonwood Heights, Utah 54121 Attn: John F. West
with a copy to:	Dakota Pacific Real Estate Partners, L.P. 299 South Main, Suite 2450 Salt Lake City, Utah 84111 Attn: Brian Dilley

and a copy to:	Baker Botts LLP 910 Louisiana Houston, Texas 77002 Attn: Kim Schlanger
If to Beneficiary, to:	America First Federal Credit Union 4646 South 1500 West, Suite 130 Riverdale, Utah 84405 Attn: Business Services Department
If to Trustee, to:	First American Title Insurance Company 299 South Main Street, Suite 2070 Salt Lake City, Utah 84111 Attn: Brenda S. Holliday Telephone: 801-596-2037

Any notice delivered personally or by courier shall be deemed to have been given when delivered. Any notice sent by mail shall be presumed to have been received five (5) business days after deposit in the United States mail, with postage prepaid and properly addressed. Any party may change its address by giving notice to the other party of its new address in the manner provided above.

12.2 Severability. If any provision of this Deed of Trust shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions contained in this Deed of Trust or render the same invalid, inoperative or unenforceable to any extent whatsoever.

12.3 Amendments, Changes and Modifications. This Deed of Trust may not be amended, changed, modified, altered or terminated without the prior written consent of both Beneficiary and Trustor.

12.4 Governing Law. This Deed of Trust shall be governed exclusively by and construed in accordance with the applicable laws of the State of Utah, without giving effect to principles of conflicts of laws.

12.5 Interpretation. Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The article and section headings contained in this Deed of Trust are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

12.6 Binding Effect. This Deed of Trust shall be binding upon shall inure to the benefit of the respective successors and assigns of Beneficiary and Trustor.

12.7 Waivers. Beneficiary's failure at any time or times hereafter to require strict performance by Trustor of any of the undertakings, agreements or covenants contained in this Deed of Trust shall not waive, affect or diminish any right of Beneficiary hereunder to demand strict compliance and performance therewith. Any waiver by Beneficiary of any Event of Default under this Deed of Trust shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements or covenants of Trustor under this Deed of Trust shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

12.8 Access. Beneficiary, or Beneficiary's authorized agents and representatives, is hereby authorized and shall have the right, at all reasonable times and upon reasonable notice except in an emergency when no notice will be required during the existence of this Deed of Trust for the purpose of inspecting the Trust Estate or for the purpose of performing any of the acts that Beneficiary is authorized under this Deed of Trust to perform.

12.9 No Partnership. Nothing contained in this Deed of Trust or in any Loan Document shall be construed as creating a joint venture or partnership between Trustor, Trustee and Beneficiary. There shall be no sharing of losses, costs and expenses between Trustor, Trustee and Beneficiary, and neither Beneficiary nor Trustee shall have any right of control or supervision, except as Beneficiary and Trustee may exercise their rights and remedies provided hereunder and in the Loan Documents. In addition, Trustor bears the risk of diminution in value of the Property and the Improvements due to changes in market conditions. Neither Trustee nor Beneficiary shall be liable to Trustor for any loss or potential loss to Trustor that results from Trustee's or Beneficiary's exercise of their remedies under the terms of the Loan Documents, including, but not limited to, claims based on delays in commencing or completing the foreclosure of the Property, claims that the commencement of foreclosure proceedings have adversely affected the marketability of the Property, or otherwise.

12.10 Successor Trustee. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Trust Estate or some part thereof is situated a substitution of trustee. From the time the substitution is filed of record, the new Trustee shall succeed to all the powers, duties, authority and title of the Trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given to Trustor and proof thereof made in the manner provided by law.

12.11 Acceptance of Trust. Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be party, unless brought by Trustee.

12.12 Resignation of Trustee. Trustee may resign as Trustee under this Deed of Trust by recording a resignation of trustee in the office of the County Recorder of each county in which any part of the Trust Estate is located. A resignation of trustee shall not invalidate the lien and encumbrance of this Deed of Trust against the Trust Estate, or cause any negative legal consequence to the resigning Trustee.

12.13 Request for Notice of Default. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address set forth in Section 12.1 of this Deed of Trust.

12.14 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute only one instrument.

12.15 Construction Mortgage. This Deed of Trust is a "construction mortgage" for purposes of Sections 70A-9a-334 and 70A-2a-309 of the Utah enactment of the Uniform Commercial Code.

12.16 Subrogation of Beneficiary. Beneficiary shall be subrogated to the lien of any previous encumbrance of the Property discharged with funds advanced by Beneficiary under the Loan Documents, regardless of whether such previous encumbrance has been released of record.

12.17 Additional Advances. Trustor and Beneficiary agree and acknowledge that Beneficiary may elect to make Additional Advances under the terms of Section 7.4(c) of the Loan Agreement, and that any such Additional Advances shall be subject to, and secured by, this Deed of Trust. Should the Obligations decrease or increase pursuant to the terms of the Note, the Loan Agreement or otherwise, at any time or from time to time, this Deed of Trust shall retain its priority position of record until (a) the termination of the Loan Agreement; (b) the full, final and complete payment of all the Obligations; and (c) the full release and termination of the liens and security interests created by this Deed of Trust.

12.18 Release for Full Payment and Performance. Subject to the automatic revival provisions of Section 8.21 of the Loan Agreement, this Deed of Trust shall terminate and be of no further force or effect (and shall be released on Trustor's written request and at Trustor's cost and expense) upon full payment and complete performance of all of the Obligations of Trustor under the Loan Documents.

DATED effective as of the date first above written.

TRUSTOR:

COTTONWOOD GENEVA, LLC,  
a Delaware limited liability company

By: Dakota Pacific Real Estate Partners, LP,  
its sole member


By: Dakota Pacific RE GP, LLC,  
its general partner

By: Dakota Pacific RE Management, LLC,  
its manager

By:   
Lane Critchfield  
Manager

STATE OF UTAH                    )  
  : ss.  
COUNTY OF UTAH                )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of July, 2017, by Lane Critchfield, in his capacity as manager of Dakota Pacific RE Management, LLC, a Utah limited liability company, manager of Dakota Pacific RE GP, LLC, a Delaware limited liability company, general partner of Dakota Pacific Real Estate Partners, LP, a Delaware limited partnership, sole member of Cottonwood Geneva, LLC, a Delaware limited liability company, on behalf of said company.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at Salt Lake County, Utah

My Commission Expires:  
September 29, 2018

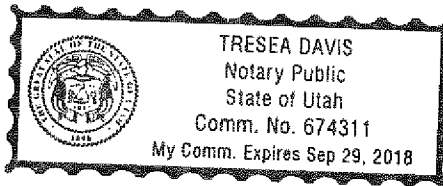




EXHIBIT "A"

PROPERTY DESCRIPTION

The following described real property is located in Utah County, Utah.

Tax Parcel Nos.: 39-258-0001; 39-258-0002; 39-258-0003; 39-258-0004; 39-258-0005; 39-258-0006; 39-258-0007; 39-258-0010.

EXHIBIT "B"

PERMITTED ENCUMBRANCES

- A. The following matters are senior to the lien and encumbrances of the Deed of Trust:
1. Taxes for the year 2017 and subsequent years.
  2. Items listed on Schedule B of the mortgagee's title insurance policy issued to Lender by the Title Company pursuant to the Loan Agreement.
  3. The Deed of Trust.

**EXHIBIT A  
LEGAL DESCRIPTION**

Lots 1, 2, 3, 4, 5, 6, 7 and 10, THE FORGE PLAT A, according to the official plat thereof, as recorded in the Office of the Utah County Recorder, Utah.

The following is shown for information purposes only: Tax ID / Parcel No. 39:258:0001, 0002, 0003, 0004, 0005, 0006, 0007, 0010