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Sidley Austin LLP
787 Seventh Avenue
New York, New York 10019
Attention: Aviva Yakren, Esq.

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

The parties to this CONSTRUCTION DEED OF TRUST, WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“**Deed of Trust**”), made as of June 13, 2019, are DOWNTOWN SLC B LLC, a New York limited liability company (“**Trustor**”), FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation (“**Trustee**”), and UTAH HOUSING CORPORATION (“**Beneficiary**”).

ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the City of Salt Lake, County of Salt Lake, State of Utah constituting Unit 1 contained within The Exchange B Condominiums and more fully described on Exhibit A attached hereto, together with all right, title, interest, and privileges of Trustor in and to all streets, ways, roads, and alleys used in connection with or pertaining to such real property, all development rights or credits, air rights, water, and water rights related to the real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the “**Improvements**”); all interest or estate which Trustor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to herein as the “**Subject Property**”). The foregoing listing of specific rights or property shall not be interpreted as a limit of general terms.

- 1.2 **ADDRESS.** The address of the Subject Property is: 447 S Blair Street, Salt Lake City, Utah. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Subject Property as described on Exhibit A.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing the following obligations (“**Secured Obligations**”):
- (a) Payment to Beneficiary of all sums at any time owing under that certain promissory note (“**Note**”) of even date herewith, in the principal amount of ELEVEN MILLION ONE HUNDRED NINETY-FIVE THOUSAND AND NO/100THS DOLLARS (\$11,195,000.00) executed by Trustor and payable to the order of Beneficiary, as lender; and
 - (b) Payment and performance of all covenants and obligations of Trustor under this Deed of Trust; and
 - (c) Payment and performance of all covenants and obligations on the part of Trustor, as borrower, under (i) that certain Project Loan Agreement (“**Project Loan Agreement**”) dated as of June 1, 2019, by and between Trustor, as borrower, and Beneficiary, as lender and (ii) that certain Construction Disbursement Agreement (“**Construction Disbursement Agreement**”), of even date herewith by and between Trustor, as borrower, and GSUIG Real Estate Member LLC, as servicer; and
 - (d) Payment and performance of all covenants and obligations, if any, of any rider attached as an exhibit to this Deed of Trust; and
 - (e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
 - (f) Payment and performance of all covenants and obligations of Trustor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Trustor and Beneficiary in connection with the Project Loan (as defined in the Construction Disbursement Agreement); and
 - (g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications,

extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.

- 2.2 **OBLIGATIONS.** The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Project Loan Agreement may permit borrowing, repayment and re-borrowing so that repayments shall not reduce the amounts of the Secured Obligations; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor’s right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof (“**Leases**”); and (b) the rents, revenue, income, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (“**Payments**”). The term “Leases” shall also include all guarantees of and security for the lessees’ performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary’s right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.
- 3.2 **GRANT OF LICENSE.** Beneficiary confers upon Trustor a license (“**License**”) to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon and during the continuance of a Default (provided, however, that Beneficiary shall not be obligated to accept a cure of a Default), the License shall be automatically revoked and Beneficiary may collect and apply the Payments pursuant to Section 6.4 hereof without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees’ undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies or powers granted to Beneficiary or Trustee hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.
- 3.4 **RESERVED.**
- 3.5 **COVENANTS.** Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce by all available remedies performance by the lessees of the obligations of the lessees contained in the Leases; (b) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) exercise Trustor's commercially reasonable efforts to keep all portions of the Subject Property leased at all times; (d) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations (or subordination, attornment and non-disturbance agreements executed by the lessor and lessee) of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Trustor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Project Loan Agreement: (i) execute any other assignment relating to any of the Leases; (ii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rentals one (1) month in advance of the time when they become due; (iii) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (iv) consent to any assignment or subletting by any lessee; or (v) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee) modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.
- 3.6 **ESTOPPEL CERTIFICATES.** Within fifteen (15) days after written request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by

Beneficiary, estoppel certificates executed by Trustor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary as of the date hereof a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein or (ii) any existing or future improvements on the real property (which real property and improvements are collectively incorporated into the definition of "Subject Property" as stated above); together with all rents and security deposits derived from the Subject Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Subject Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; 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 the Subject Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, 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 with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Subject Property or any portion thereof; all of Trustor's right, title and interest, now or hereafter acquired, to the payment of money from

Beneficiary to Trustor under any swap, derivative, foreign exchange or hedge transaction or arrangement (or similar transaction or arrangement howsoever described or defined) at any time entered into between Trustor and Beneficiary in connection with the Project Loan; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

The foregoing sentence is intended to grant in favor of the Beneficiary a first priority continuing lien and security interest in all of the Trustor's assets. The Trustor authorizes the Beneficiary and its counsel to file UCC (as hereinafter defined) financing statements in form and substance satisfactory to the Beneficiary, describing the collateral as "all assets of the debtor, whether now owned or existing or hereafter acquired or arising, and all proceeds and products thereof, including, without limitation, all fixtures on the Subject Property" or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Collateral.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Utah Uniform Commercial Code, as amended or recodified from time to time ("UCC"), and is acknowledged and agreed to be a "construction mortgage" under the UCC.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral, subject to Permitted Encumbrances (as defined in the Construction Disbursement Agreement); (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity, except in connection with the Subordinate Loans (as defined in the Construction Disbursement Agreement); (c) Trustor's principal place of business is located at the address shown in Section 7.10 hereof; (d) Trustor is organized under the laws of the State of New York and is authorized to do business in the state of Utah; and (e) Trustor is in good standing under the laws of the State of Utah.
- 4.3 **RIGHTS OF BENEFICIARY.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC Section 70A-9a-620, or other applicable law.
- 4.4 **RIGHTS OF BENEFICIARY ON DEFAULT.** Upon the occurrence and during the continuance of a Default (provided, however, that Beneficiary shall not be obligated to accept a cure of a Default) under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sale; and
- (b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC Section 70A-9a-620, or other applicable law.

- 4.5 **POWER OF ATTORNEY.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.
- 4.6 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Project Loan Documents (as defined in the Construction Disbursement Agreement), so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Project Loan Agreement and the Construction Disbursement Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Trustor represents and warrants that Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and that this Deed of Trust is a first priority lien on the Subject Property.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Trustor's rights to contest payment of taxes as may be provided in the Project Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company or arising in respect of the occupancy, use or possession thereof which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein, and all common charges, dues, and assessments imposed pursuant to the Condominium Documents (as hereinafter defined). Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3 **TAX AND INSURANCE IMPOUNDS.** At any time, at Beneficiary's option and upon its demand, Trustor, shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property or Collateral and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents when the same are next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies, charges and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts when due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Loan Document, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation and while such Default is continuing (provided, however, that Beneficiary shall not be obligated to accept a cure of a Default), Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and the Trustee shall be released from all liability with respect thereto. Within ninety-five (95) days following full repayment of the Secured

Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Subject to the provisions of the Project Loan Agreement and the Construction Disbursement Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or Collateral, or any interest therein, whether senior or subordinate hereto.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property or Collateral; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property or Collateral; (iii) all proceeds of any insurance policies (whether or not expressly required by Beneficiary to be maintained by Trustor, including, but not limited to, earthquake insurance and terrorism insurance, if any) payable by reason of loss sustained to all or any part of the Subject Property or Collateral; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

(b) At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing

charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Construction Disbursement Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Subject Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

- 5.7 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.** Subject to the provisions of the Project Loan Agreement and the Construction Disbursement Agreement, Trustor covenants: (a) to insure the Subject Property and Collateral against such risks as the Construction Disbursement Agreement may require and that the Condominium Documents may require, and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies providing such insurance; (b) to keep the Subject Property and Collateral in good condition and repair; (c) not to remove or demolish the Subject Property or Collateral or any part thereof, not to alter, restore or add to the Subject Property or Collateral and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property without Beneficiary's prior written consent or as provided in the Project Loan Agreement and the Construction Disbursement Agreement; (d) to complete or restore promptly and in good and workmanlike manner the Subject Property and Collateral, or any part thereof which may be damaged or destroyed, without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 5.6; (e) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property or Collateral and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (f) not to commit or permit waste of the Subject Property or

Collateral; and (g) to do all other acts which from the character or use of the Subject Property or Collateral may be reasonably necessary to maintain and preserve its value.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.

5.9 **ACCEPTANCE OF TRUST; POWERS AND DUTIES OF TRUSTEE.**

- (a) Trustee accepts this trust when this Deed of Trust is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.
- (b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in its opinion, such action would be likely to involve it in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.
- (c) With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise 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, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and

(iv) any and all other lawful action as 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 Subject Property for debts contracted for or liability or damages incurred in the management or operation of the Subject 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 such of Trustee's services hereunder as shall be rendered. **TRUSTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES, EXCEPT TO THE EXTENT ARISING FROM TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

- (d) 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, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.
- (e) 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 the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the 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.
- (f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including, without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not 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.

5.10 COMPENSATION; EXCULPATION; INDEMNIFICATION.

- (a) Trustor shall pay Trustee's fees and reimburse Trustee for expenses in the administration of this trust, including actual attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including, without limitation, any statement of amounts owing under any

Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or Collateral or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Subject Property after a Default (as hereinafter defined) or from any other act or omission (regardless of whether the same constitutes negligence) of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

- (b) **TRUSTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ACTUAL ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THIS DEED OF TRUST; (ii) BY REASON OF THE EXECUTION OF THIS DEED OF TRUST OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE SUBJECT PROPERTY; PROVIDED, TRUSTOR'S INDEMNITY SHALL NOT EXTEND TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY. THE ABOVE OBLIGATION OF TRUSTOR TO INDEMNIFY AND HOLD HARMLESS TRUSTEE AND BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE AND RECONVEYANCE OR PARTIAL RELEASE AND RECONVEYANCE OF THIS DEED OF TRUST.**
- (c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

5.11 **SUBSTITUTION OF TRUSTEES.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in

the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.

- 5.12 **DUE ON SALE OR ENCUMBRANCE**. If the Subject Property or any interest therein shall be sold, transferred (including, without limitation, through sale or transfer of a majority or controlling interest of the corporate stock or general partnership interests or limited liability company interests of Trustor), mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY**. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property and Collateral or in any manner obligated under the Secured Obligations (“**Interested Parties**”), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and Collateral and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of and security interests created by this Deed of Trust upon the Subject Property and Collateral.
- 5.14 **RECONVEYANCE**. Upon Beneficiary’s written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, without warranty, the Subject Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as “the person or persons legally entitled thereto” and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Subject Property to the person or persons legally entitled thereto.
- 5.15 **SUBROGATION**. Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to the Loan Documents or by the proceeds of any loan secured by this Deed of Trust.

- 5.16 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and Collateral and ascertaining Trustor's compliance with the terms hereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term “**Default**” shall mean the existence of any Event of Default (as such term is defined in the Construction Disbursement Agreement) or any default, beyond any applicable notice and/or cure period, under any other Loan Document.
- 6.2 **RIGHTS AND REMEDIES.** At any time after the occurrence of any Default, Beneficiary and Trustee shall each have all the following rights and remedies:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
 - (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;

- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof;
- (f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;
- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine in their sole discretion; and
- (h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, actual attorneys' fees, and taxes), costs of any hazardous materials

clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and actual attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under Section 6.2 or Section 3.2, less all costs and expenses incurred by Beneficiary or any receiver under Section 6.2 or Section 3.2, including, without limitation, actual attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as

an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.

- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Trustor agrees to pay to Beneficiary immediately and on demand all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and actual attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any actual attorneys' fees.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Subject Property and Collateral, Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Subject Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act (whether such failure constitutes negligence) by Beneficiary under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and Collateral and such further rights and agreements are incorporated herein by this reference.
- 7.2 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing.

- 7.3 **OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL.** If more than one person has executed this Deed of Trust as “Trustor”, the obligations of all such persons hereunder shall be joint and several.
- 7.4 **WAIVER OF MARSHALLING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property and Collateral, hereby waives all rights to have the Subject Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation (“**Other Property**”) marshalled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.5 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term “Subject Property” and “Collateral” means all and any part of the Subject Property and Collateral, respectively, and any interest in the Subject Property and Collateral, respectively.
- 7.6 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.6 does not waive or modify the provisions of Section 5.12.
- 7.7 **EXECUTION IN COUNTERPARTS.** To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.
- 7.8 **UTAH LAW.** This Deed of Trust shall be construed in accordance with the laws of the State of Utah, except to the extent that federal laws preempt the laws of the State of Utah.
- 7.9 **INCORPORATION.** All Exhibits and Schedules, as attached, are incorporated into this Deed of Trust by this reference.

7.10 **NOTICES**. All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by nationally recognized overnight courier (e.g. FedEx) or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

Trustor:	Downtown SLC B LLC c/o The Domain Companies LLC 11 Park Place, Suite 1705 New York, New York 10007 Attention: Matthew Schwartz Telephone No.: (212) 991-0001 Email: mschwartz@thedomaincos.com
With a copy to:	Cannon Heyman & Weiss, LLP 54 State Street, 5th Floor Albany, New York 12207 Attention: David Kuracina, Esq. Telephone No.: (518) 465-1500 x155 Email: dkuracina@chwattys.com
Trustee:	First American Title Insurance Company 215 South State Street, Suite 380 Salt Lake City, Utah 84111
Beneficiary:	Utah Housing Corporation 2479 S. Lake Park Boulevard West Valley City, Utah 84120 Attention: President Facsimile: (801) 323-2609
With a copy to:	GSUIG Real Estate Member LLC c/o Goldman Sachs Bank USA 200 West Street, 27 th Floor New York, New York 10282 Attention: Michael Lohr Email: michael.lohr@gs.com
	GSUIG Real Estate Member LLC c/o Goldman Sachs Bank USA 200 West Street, 27 th Floor New York, New York 10282 Attention: Urban Investment Group Portfolio Manager Email: gs-uig-docs@gs.com ; gs-uig-portfolio-manager@gs.com
With a copy to:	Sidley Austin LLP 787 Seventh Avenue New York, New York 10019 Attention: Aviva Yakren, Esq. Telephone No.: (212) 839-5682 Fax No.: (212) 839-5599 Email: ayakren@sidley.com

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the

manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Subject Property or to Trustor naming Beneficiary, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note, the Project Loan Agreement or the Construction Disbursement Agreement.

7.11 **MODIFICATIONS**. This Deed of Trust and all of the terms, covenants, provisions, conditions and grants contained in this Deed of Trust cannot be altered, amended, waived, modified or discharged orally and no executory agreement shall be effective to modify, waive or discharge, in whole or in part, anything contained in this Deed of Trust unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment, waiver or discharge is sought.

7.12 **WAIVER**. TRUSTOR AND THE BENEFICIARY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS DEED OF TRUST AND/OR ANY OTHER LOAN DOCUMENTS.

7.13 **CONDOMINIUM PROVISIONS**.

(a) The Subject Property includes the rights appurtenant to the Subject Property in the undivided interests of the Subject Property in common elements of, the Condominium (as hereinafter defined). If the Condominium Association (as hereinafter defined) holds title to property for the benefit or use of its members or shareholders, the definition of the Subject Property shall also include, Trustor's percentage interest in such property owned by the Condominium Association and the uses, proceeds and benefits of Trustor's interest. Trustor covenants and agrees as follows:

(i) Trustor shall fully and faithfully perform each and every obligation on the part of Trustor to be performed in connection with (i) the Declaration of Condominium for The Exchange B Condominiums, recorded in the official records of the Salt Lake County, Utah Recorder, (ii) the Condominium Plat recorded in the official records of the Salt Lake County, Utah Recorder, (iii) the by-laws of the Condominium Association, and (vi) the rules and regulations promulgated by the board of trustees or other executive body of the Condominium Association from time to time, and all other documents necessary for the operation and ownership of all or portions of the Subject Property as a condominium project, including, but not limited to, the subdivision maps, a management agreement, and all other documents relating to the creation on the Subject Property, or a part thereof, of a valid condominium project under and the regulation and administration thereof after such creation, as the same may be amended from time to time (collectively, the "**Condominium Documents**"); and

- (ii) Without obtaining the prior written consent of Beneficiary, Trustor will not, and will not permit the fee owner to, initiate join in or consent to any material amendment of any kind to the Condominium Documents or to any vote to terminate the Condominium or to consent to the Condominium Association incurring indebtedness in excess of \$10,000 or to any private restrictive covenant zoning ordinance, or other public or private restrictions, limiting or affecting the uses which may be made of the Subject Property or any part thereof, except those restrictions currently set forth in the Condominium Documents (“**Restrictive Covenants**”).
- (b) Trustor acknowledges that the Subject Property is subject to a condominium regime pursuant to the Condominium Documents.
- (c) If the owner’s association, board of trustees or other entity (the “**Condominium Association**”) which acts for The Exchange B Condominium Owner’s Association, Inc. (the “**Condominium**”) holds title to property for the benefit or use of its members or shareholders, the definition of Subject Property shall also include Trustor’s interest, if any, in the owner’s association, board of trustees or other entity which acts for the condominium (the “**Board of Trustees**”) and the uses, proceeds and benefits of Trustor’s interest, if any, in the condominium, provided, however, prior to any foreclosure by Beneficiary, that the foregoing does not, and is not intended to, affect in any manner Trustor’s consent, approval or veto rights under or with respect to the Condominium or the Condominium Documents, to transfer such rights or the exercise or enforcement of such rights to Beneficiary or otherwise affect, limit or impair Trustor’s ability to exercise and/or enforce such rights.
- (d) Subject to the terms of the Condominium Documents, Trustor covenants and agrees to promptly and faithfully observe the covenants and restrictions and to promptly comply in all material respects with, and perform the obligations and duties (if any) imposed on Trustor by the Condominium Documents, as the same are in force and effect from time to time. Trustor will fully enforce, in all material respects, all rights, powers, remedies and privileges given to Trustor pursuant to the Condominium Documents. Trustor shall deliver to the Beneficiary, within ten (10) days after its receipt thereof, a copy of any notice given under the Condominium Documents received from the Condominium Association or any managing agent of the Condominium which in any way adversely affects the Subject Property. In the event Trustor does not (to the extent Trustor has rights to do so pursuant to the Condominium Documents) diligently proceed to cure a default by Trustor under the Condominium Documents, Beneficiary shall have the right to cure such default and any amount or expense incurred in curing such default, together with interest at the Default Rate, shall be payable by Trustor on demand, shall be added to the Secured Obligations and shall be secured by this Deed of Trust.
- (e) Trustor covenants and agrees that it will only use, or permit to be used, all or any portion of the Subject Property or its appurtenant interest in the common elements as is appropriate for residential and commercial use, as provided in, and which shall

comply with, all requirements of the Condominium Documents and all applicable zoning laws.

- (f) To the extent Trustor has any consent right therefor under the Condominium Documents, Trustor shall not, except with the prior written consent of Beneficiary, consent to the subdivision or partition of the Subject Property into two or more tax lots.
- (g) If Trustor does not pay any assessments or other amounts imposed on the Subject Property pursuant to the Condominium Documents within ten (10) days of when they are due, then Beneficiary shall have the right, but shall not be obligated, to pay the same and Trustor shall pay to Beneficiary all such amounts so paid by Beneficiary with interest at the Default Rate thereon from the date of payment until reimbursed by Trustor. Any such payment by Beneficiary, until reimbursed by Trustor, shall be secured by this Deed of Trust and shall be collectible in like manner as the Secured Obligations.


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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

DOWNTOWN SLC B LLC,
a New York limited liability company

By: Downtown SLC B Residential LLC, its
manager

By: Downtown SLC B Managing Member LLC, its
managing member

By: 
Name: Matthew Schwartz
Title: Authorized Signatory

STATE OF LOUISIANA)
) ss:
PARISH OF ORLEANS)

On June 11, 2019, before me, the undersigned officer, personally appeared Matthew Schwartz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in her/his capacity, and that by his/her signature on the instrument, the individual, the person or the entity upon behalf of which the individual acted, executed the instrument.

(Seal)


Notary Public

Vanessa W. Graf
Attorney/Notary Public
State of Louisiana
LSBA No. 36860

[Signature Page to Deed of Trust]

EXHIBIT A
DESCRIPTION OF SUBJECT PROPERTY

Residential

Real property in the City of Salt Lake City, County of Salt Lake, State of Utah, described as follows:

PARCEL 1:

UNITS 100, 201, 301, AND 401, THE EXCHANGE B CONDOMINIUMS, AS THE SAME IS IDENTIFIED IN THE EXCHANGE B CONDOMINIUMS PLAT RECORDED IN SALT LAKE COUNTY, UTAH, ON June 13, 2019 AS ENTRY NO. 13008781 IN BOOK 2019P, PAGE 186 OF OFFICIAL RECORDS, AND IN THE DECLARATION OF CONDOMINIUM OF THE EXCHANGE B CONDOMINIUMS RECORDED IN SALT LAKE COUNTY, UTAH ON June 13, 2019 AS ENTRY NO. 13008782 IN BOOK 10791 AT PAGE 6126-6186 OF OFFICIAL RECORDS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR ACCESS OVER A PORTION OF LOT 6 OF BLOCK 35, PLAT 3 OF THE OFFICIAL SALT LAKE CITY SURVEY "PLAT B", AND ALSO SITUATE IN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH. THE BOUNDARIES OF WHICH ARE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF 400 SOUTH STREET SAID POINT IS 724.00 FEET N.00°02'38"W. ALONG THE MONUMENT LINE OF 300 EAST STREET AND 346.95 FEET N.89°46'07"E. FROM THE SALT LAKE CITY MONUMENT LOCATED THE INTERSECTION OF 300 EAST STREET AND 500 SOUTH STREET (NOTE: BASIS OF BEARING IS N.00°02'38"W. ALONG THE MONUMENT LINE BETWEEN MONUMENTS AT THE INTERSECTIONS OF 400 SOUTH 300 EAST AND 500 SOUTH 300 EAST); AND RUNNING THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE N.89°46'07"E. 40.00 FEET; THENCE S.00°14'05"E. 330.13 FEET TO THE SOUTHERLY LINE OF SAID LOT 6; THENCE ALONG SAID SOUTHERLY LOT LINE S.89°45'54"W. 40.00 FEET; THENCE N.00°14'05"W. 330.13 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR ACCESS OVER PEOPLE'S WAY (PRIVATE STREET) AS SET FORTH ON THE SALT LAKE CITY PUBLIC SAFETY BUILDING SUBDIVISION AMENDED & EXTENDED PLAT RECORDED MARCH 5, 2019 AS ENTRY NO. 12944879 IN BOOK 2019P AT PAGE 80 OF OFFICIAL RECORDS, SALT LAKE COUNTY RECORDER.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR ACCESS OVER THE SOUTH HALF OF BLAIR STREET (PRIVATE STREET) AS SET FORTH ON THE SALT LAKE CITY PUBLIC SAFETY BUILDING SUBDIVISION AMENDED & EXTENDED PLAT RECORDED MARCH 5, 2019 AS ENTRY NO. 12944879 IN BOOK 2019P AT PAGE 80 OF OFFICIAL RECORDS, SALT LAKE COUNTY RECORDER.

PARCEL 5:

LOT 3B, SALT LAKE CITY PUBLIC SAFETY BUILDING SUBDIVISION AMENDED & EXTENDED, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

ALSO:

A PORTION OF LOT 7 OF BLOCK 35, OF THE OFFICIAL SALT LAKE CITY SURVEY "PLAT B", AND ALSO SITUATE IN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH. THE BOUNDARIES OF WHICH ARE DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHERLY RIGHT OF WAY LINE OF 400 SOUTH STREET, SAID POINT BEING NORTH 89°46'06" EAST 376.00 FEET FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 35, PLAT "B", SALT LAKE CITY SURVEY, SAID POINT ALSO BEING SOUTH 89°46'06" WEST 284.44 FEET FROM THE NORTHEAST CORNER OF LOT 8 OF SAID BLOCK 35, SAID POINT ALSO BEING 724.00 FEET NORTH 00°02'38" WEST ALONG THE MONUMENT LINE AND 443.49 FEET NORTH 89°46'06" EAST FROM THE MONUMENT IN THE INTERSECTION OF 300 EAST STREET AND 500 SOUTH STREET, AND RUNNING THENCE NORTH 89°46'06" EAST 8.49 FEET ALONG SAID SOUTHERLY RIGHT OF WAY LINE TO THE WEST FACE OF A BACK OF EXISTING CURB AND CURB LINE; THENCE SOUTH 00°01'59" WEST 165.06 FEET ALONG SAID WEST FACE OF A BACK OF EXISTING CURB AND WEST FACE CURB LINE EXTENDED SOUTHERLY; THENCE SOUTH 89°45'54" WEST 7.72 FEET TO A POINT ON THE WESTERLY LINE OF THAT CERTAIN SPECIAL WARRANTY DEED RECORDED APRIL 25, 2012 AS ENTRY NO. 11377798 IN BOOK 10011 AT PAGE 6179, AT THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE NORTH 00°14'07" WEST 165.06 FEET (DEED =NORTH 00°14'24" WEST 165.00 FEET) ALONG SAID WESTERLY LINE TO THE POINT OF BEGINNING.

TAX PARCEL NUMBERS: (16-06-405-021-0000 & 16-06-405-022-0000)

PARCEL 6:

UNDERGROUND UTILITY EASEMENT DATED June 11, 2019 MADE BY SALT LAKE CITY CORPORATION TO DOWNTOWN SLC B LLC, A NEW YORK LIMITED LIABILITY COMPANY, RECORDED JUNE 14, 2019 AS ENTRY NO. 13009423 IN BOOK 10791 AT PAGE 9525 OF OFFICIAL RECORDS, SALT LAKE COUNTY RECORDER.

PARCEL 7:

STORM SEWER EASEMENT AND CONNECTION AGREEMENT DATED JUNE 13, 2019 BETWEEN SALT LAKE CITY CORPORATION, A UTAH MUNICIPAL CORPORATION AND DOWNTOWN SLC B LLC, A NEW YORK LIMITED LIABILITY COMPANY, AND DOWNTOWN SLC B RETAIL CONDO LLC, A NEW YORK LIMITED LIABILITY COMPANY, RECORDED JUNE 14, 2019 AS ENTRY NO. 13009369 IN BOOK 10791 AT PAGE 9128 OF OFFICIAL RECORDS, SALT LAKE COUNTY RECORDER.