

*This document prepared by;*  
*After recording return to:*  
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Tax Parcel No. 15-34-377-033

13305292  
6/22/2020 4:52:00 PM \$40.00  
Book - 10965 Pg - 5350-5384  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 35 P.

CTA 115803-CAB



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

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

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

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

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*Deed of Trust – Loan No. 0000086545*  
4822-4646-5965

**Ent 13305292 BK 10965 PG 5350**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING ("**Deed of Trust**") is made as of June 22, 2020, by and among:

Trustor: **BWF STAY SV PROPERTY OWNER, LLC**  
111 E. Sege Lily Drive, Suite 400  
Salt Lake City, UT 84070  
Attention: Russ Minnick

*With a copy to:*

Bridge Investment Group LLC  
111 E. Sege Lily Drive, Suite 400  
Salt Lake City, UT 84070  
Attention: Matthew Grant, Assistant General Counsel  
E-mail: Matt.Grant@bridgeig.com

Trustee: **COTTONWOOD TITLE INSURANCE AGENCY, INC.**  
1996 East 400 South, Suite 120  
Salt Lake City, UT 84121

Administrative Agent: **WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION**  
6720 Scottsdale Road, Suite 111  
Scottsdale, AZ 85253  
Attention: Daniel Nillen

As referenced in this Deed of Trust, the word "Lender" or "Lenders" shall have the meaning given to such term in the Loan Agreement referred to below, and the word "Administrative Agent" shall mean **WASHINGTON FEDERAL BANK, NATIONAL ASSOCIATION** and its successors, participants and assigns, both in its capacity as administrative agent for the Lenders and for and on behalf of itself as one of the Lenders. Other capitalized terms used in this Deed of Trust without definition have the meanings given to them in the Loan Agreement referred to below. Administrative Agent is the beneficiary of this Deed of Trust.

## 1. GRANT AND SECURED OBLIGATIONS.

1.1 **Grant.** Lenders have agreed to make certain advances from time to time to Trustor in the maximum principal amount of SIXTY-FIVE MILLION THREE HUNDRED EIGHTY-FIVE THOUSAND AND NO/100 DOLLARS (\$65,385,000.00) (the "**Loan**"). In connection therewith, for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Trustor hereby irrevocably and unconditionally grants, bargains, sells, conveys, transfers and assigns to Trustee in trust, with power of sale and with right of entry and possession, for the ratable benefit of Administrative Agent and the Lenders, all estate, right, title and interest that Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Property**");

1.1.1 The real property located in the county of Salt Lake, state of Utah, as described in EXHIBIT A attached hereto, together with all existing and future easements and rights affording access to it (the "**Premises**");

1.1.2 All buildings, structures, and improvements now located or later to be constructed on the Premises (the "**Improvements**") and, together with the Premises, the "**Project**");

1.1.3 All existing and future appurtenances, privileges, easements, franchises, and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium, and other commercially valuable substances that may be in, under or produced from any part of the

Premises, all development rights and credits, air rights, water, water rights (including the Water Rights, as such term is hereinafter defined), and water stock, and any portion of the Premises lying in the streets, roads or avenues currently existing or later constructed;

1.1.4 Subject to, and without in any way limiting the collateral assignment in Section 2 below, all existing and future leases, subleases, subtenancies, licenses, rental agreements, occupancy agreements, and concessions relating to the use and enjoyment of or affecting all or any part of the Premises or Improvements, and any and all guaranties, extensions, renewals, replacements and modifications thereof, and all other agreements relating to or made in connection therewith (collectively, the "**Leases**");

1.1.5 All real property and improvements on such Premises, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises or Improvements;

1.1.6 All goods, materials, supplies, chattels, furniture, fixtures, equipment, and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises or Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration, and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;

1.1.7 All building materials, equipment, work in process and other personal property of any kind, whether stored on the Premises or elsewhere, that have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements;

1.1.8 All of Trustor's interest in and to all operating accounts, the proceeds of the Loan, whether disbursed or not, all reserve accounts, impound accounts, and any other bank accounts of Trustor relating to the Project or the operation thereof;

1.1.9 All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Administrative Agent or any Lender), that arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally;

1.1.10 All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally-registered credits, other credits, waivers and payments, whether in cash or in kind, due from or payable by (i) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a "**Governmental Authority**"); all present and future monetary deposits to any Governmental Authority, and any other body or agency, for the installation, or to secure the installation, of any utility pertaining to the Premises or the Improvements; all refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Authority for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Trustor with respect to the Premises or Improvements or upon any or all of the Premises or Improvements or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development or rehabilitation of the Premises or Improvements;

1.1.11 All insurance policies pertaining to the Premises, the Improvements, or any other property described in this Section 1.1, and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any property described in this Section 1.1 into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any

condemnation or eminent domain proceeding or any settlement in lieu thereof, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described in this Section 1.1, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

**1.1.12** All of Trustor's right, title, and interest in and to any and all units, common elements, declarant rights, development rights, and any other rights relating to the Premises or the Improvements, whether now existing or subsequently arising, under any and all condominium declarations, covenants, conditions, and restrictions, development agreements, or other agreements or declarations now existing or later executed relating to the Premises or Improvements, and all Laws now existing or later enacted relating to the Premises or Improvements, including those relating to condominiums, and all rights of Trustor in connection with any owner's association, condominium association, architectural control committee, or similar association or committee, established in connection with the Project, including Trustor's rights and powers to elect, appoint, and remove officers and directors of any such associations or committees;

**1.1.13** All of Trustor's right, title, and interest in and to any swap transaction or interest rate agreement or interest rate hedging program through the purchase by Trustor of an interest rate swap, cap, or such other interest rate protection product (an agreement evidencing any such arrangement, an **"Interest Rate Agreement"**), all whether now or hereafter entered into by Trustor with respect to the Loan, including any and all amounts payable to Trustor, any deposit account or accounts with Administrative Agent in the name of Trustor for deposit of payments to Trustor in connection with any Interest Rate Agreement or swap transaction, and any and all funds now or hereafter on deposit therein;

**1.1.14** All of Trustor's right, title, and interest in and to (i) all agreements (except for Leases), commitments, and options now or hereafter existing with respect to the construction, ownership, maintenance, operation, management, or use of the Premises or Improvements; (ii) all plans, specifications, drawings, and reports now existing or hereafter prepared with respect to the Premises or Improvements, including architectural and engineering plans, specifications and drawings, soils reports, environmental reports, and all other property reports; (iii) the Project Licenses (defined below); (iv) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i)-(iii); and (v) any and all guarantees, warranties (including building or manufacturer's warranties) and other undertakings (including payment and performance bonds) now existing or hereafter entered into or provided with respect to any of the items described in clauses (i) through (iv) (collectively, the **"Contracts"**);

**1.1.15** All of Trustor's right, title, and interest in and to all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements;

**1.1.16** To the fullest extent not prohibited by applicable Laws, all of Trustor's rights in all building permits, governmental permits, licenses, variances, applications, conditional or special use permits, and other authorizations now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing, or use of the Premises or Improvements (the **"Project Licenses"**);

**1.1.17** All books, records, and data pertaining to any and all of the property described above, however recorded, stored, or maintained, including digital, electronic, and computer-readable data and any computer hardware or software necessary to access and process such data (**"Books and Records"**); and

**1.1.18** All products, profits, rents, proceeds of, additions and accretions to, substitutions, and replacements for, and changes in any of the property described above.

## **1.2 Secured Obligations.**

**1.2.1** For the ratable benefit of Administrative Agent and the Lenders, Trustor makes the grant, conveyance, assignment, and transfer set forth above, and grants the security interests set forth below for the purpose of securing the following obligations (the **"Secured Obligations"**) in any order of priority that Administrative Agent may choose:

1.2.1.1 Payment of all obligations at any time owing under those certain promissory notes evidencing the Loan (individually and collectively, as the context may require, the "**Notes**") payable by Trustor, as maker, to the order of each Lender, as holder;

1.2.1.2 Payment and performance of all obligations of Trustor under this Deed of Trust;

1.2.1.3 Payment and performance of all obligations of Trustor under the Construction Loan Agreement of even date herewith between Trustor, as "Borrower," and Administrative Agent, on behalf of the Lenders (the "**Loan Agreement**");

1.2.1.4 Payment and performance of any obligations of Trustor under any Loan Documents that are executed by Trustor, but specifically excluding any obligations of Trustor under any guaranty of the Secured Obligations or any separate indemnity agreement executed in connection with the Loan (each an "**Indemnity Agreement**"), including any environmental, hazardous materials, or building access indemnity agreement;

1.2.1.5 Payment and performance of all obligations of Trustor arising from any Interest Rate Agreements, including any Cash Settlement Amount or any payments on Early Termination payable by Trustor under any Swap Transaction or Confirmation. Capitalized terms used in this subsection not otherwise defined in this Deed of Trust are defined in the 2006 ISDA Definitions published by the International Swap Dealers Association, Inc.;

1.2.1.6 All other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform for the benefit of Administrative Agent or any Lender, when a writing evidences the parties' agreement that the advance or obligation is secured by this Deed of Trust;

1.2.1.7 Payment and performance of all modifications, amendments, restatements, extensions, and renewals, however evidenced, of any of the foregoing Secured Obligations; and

1.2.1.8 Payment and performance of all future advances with respect to any of the foregoing Secured Obligations.

1.2.2 All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Notes or the Loan Agreement that permit borrowing, repayment, and re-borrowing, or that provide for a change in the interest rate of any Secured Obligation.

1.2.3 This Deed of Trust shall not secure any obligations of guarantors or other third parties under any guaranties of the Secured Obligations or any Indemnity Agreement.

## 2. ASSIGNMENT OF LEASES AND RENTS.

2.1 **Assignment.** Trustor hereby collaterally assigns and grants to Administrative Agent, for the ratable benefit of Administrative Agent and the Lenders a security interest in, as additional security for the Secured Obligations, all of the right, title and interest of Trustor in and to (a) any and all Leases; and (b) all rents, including but not limited to "Rents" as defined in the Act, issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property (collectively, "**Rents**"), including minimum rents, additional rents, advance rents, termination payments, bankruptcy claims, forfeited security deposits, common area maintenance charges, parking revenues, entrance fees, service fees, damages following default, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability due to destruction or damage to the Property; together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due; together with any award or other payment that Trustor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving

any Tenant under the Leases; together with any and all payments made by or on behalf of any Tenant of any part of the Property in lieu of rent; together with all rights and claims of any kind that Trustor may have against any tenant, resident, occupant, lessee, or licensee under the Leases (each a "**Tenant**") or against any other occupant of the Premises or Improvements.

**2.2 Right to Collect Rents.** Trustor may collect and retain the Rents as they become due and payable, unless or until the occurrence of an Event of Default (defined below). Upon the occurrence of an Event of Default, such right to collect and retain Rents shall automatically terminate without notice to Trustor, and without prejudice to Administrative Agent. Administrative Agent may thereafter, without taking possession of the Property, collect the Rents for the ratable benefit of Administrative Agent and the Lenders. Administrative Agent and Trustor agree that the mere recordation of this Deed of Trust entitles Administrative Agent immediately to collect and receive Rents upon the occurrence of an Event of Default without first taking any enforcement action under applicable Laws, such as, but not limited to, providing notice to Trustor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver.

**2.3 No Encumbrance.** Trustor shall not assign, sell, pledge, transfer, mortgage, hypothecate, or otherwise encumber its interests in any of the Leases or Rents.

**2.4 Collection and Application of Rents.**

**2.4.1 Right to Collect; Attorney-in-Fact.** Subject to the right to collect Rents granted to Trustor above, Administrative Agent has the right, power, and authority to collect any and all Rents. Trustor hereby appoints Administrative Agent its attorney-in-fact, coupled with an interest, to, at such times as Administrative Agent in its sole discretion may so choose, (a) demand, receive and enforce payment of any and all Rents, including past due and unpaid Rents; (b) give receipts, releases and satisfactions for any and all Rents; (c) sue either in the name of Trustor or in the name of Administrative Agent for any and all Rents; (d) perform any obligation, covenant or agreement of Trustor under any of the Leases, and, in exercising any of such obligations, pay all necessary costs and expenses, employ counsel and incur and pay attorneys' fees; (e) delegate any and all rights and powers given to Administrative Agent by this assignment of Leases and Rents; (f) appear in any bankruptcy, insolvency or reorganization proceeding involving any Tenant under the Leases and to collect any award or payment due Trustor pursuant to any such proceeding; and/or (g) use such measures, legal or equitable, in its discretion to carry out and effectuate the terms and intent of this assignment of Leases and Rents. All such actions shall be taken at the expense of Trustor, who agrees to reimburse Administrative Agent, upon demand, for all amounts expended, including reasonable attorneys' fees, together with interest thereon from the date of expenditure at the Default Rate applicable to the Loan, and the obligation to perform such actions shall be secured by this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all awards or payments received by Administrative Agent shall be applied to the Secured Obligations in such order as Administrative Agent may elect in its sole discretion.

**2.4.2 Trustor as Trustee.** From and after the occurrence of an Event of Default, Trustor shall be the agent of Administrative Agent in collection of the Rents, and any Rents so collected by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Administrative Agent, and Trustor shall, within one (1) Business Day after receipt of any Rents, pay the same to Administrative Agent to be applied by Administrative Agent as set forth below for the "Application of Rents and Other Sums."

**2.4.3 Possession of Property Not Required.** Administrative Agent's right to the Rents does not depend on whether or not Administrative Agent takes possession of the Property. In Administrative Agent's sole discretion, Administrative Agent may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while Administrative Agent or Lenders are in possession of all or part of the Property and are collecting and applying Rents as permitted under this Deed of Trust, Administrative Agent and any receiver appointed for all or any portion of the Property shall nevertheless be entitled to exercise and invoke every other right and remedy afforded any of them under this Deed of Trust and at law and in equity.

**2.4.4 Application of Rents.** Administrative Agent shall apply all Rents collected by it in the manner provided below for the "Application of Rents and Other Sums."

**2.5 Administrative Agent Not Responsible.** Under no circumstances shall Administrative Agent have any duty to produce Rents from the Property. Regardless of whether or not Administrative Agent, in person or by agent, takes actual possession of the Premises and Improvements, unless Administrative Agent agrees in writing to the contrary, Administrative Agent is not and shall not be deemed to be:

**2.5.1** Responsible for the control, care, management or repair of the Property;

**2.5.2** A "mortgagee in possession" for any purpose;

**2.5.3** Responsible for performing any of the obligations of the lessor under any Lease;

**2.5.4** Responsible for any waste committed by Tenants or other occupants of the Property or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair, or control of the Property;

**2.5.5** Responsible for any loss sustained by Trustor resulting from Administrative Agent's failure to lease the Premises or Improvements or from any other act or omission of Administrative Agent in managing the Property or administering the Leases; or

**2.5.6** Liable in any manner for the Property or the use, occupancy, enjoyment, or operation of all or any part of it.

**2.6 Consent to Payment of Rents Directly to Administrative Agent.** At any time following an Event of Default, Administrative Agent may, at its option, notify any Tenant or other parties of the existence of this assignment of Leases and Rents. Trustor hereby specifically authorizes, instructs, and directs each and every present and future Tenant of all or any part of the Premises or Improvements to pay all unpaid and future Rents directly to Administrative Agent, for the ratable benefit of Administrative Agent and the Lenders, upon receipt of demand from Administrative Agent to so pay the same, and Trustor hereby agrees that each such present and future Tenant may rely upon such written demand from Administrative Agent to so pay the Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Administrative Agent is otherwise entitled to the Rents. No proof of the occurrence of an Event of Default shall be required. Trustor hereby waives any right, claim or demand that Trustor may now or hereafter have against any present or future Tenant by reason of such payment of Rents to Administrative Agent, and any such payment shall discharge such Tenant's obligation to make such payment to Trustor.

**2.7 Leasing.** Trustor shall not lease the Premises or Improvements except in accordance with the provisions of the Loan Agreement.

**2.8 Further Actions.** Trustor shall punctually observe, perform, and discharge all obligations, terms, covenants, conditions, and warranties to be performed by Trustor pursuant to the Leases. Trustor agrees to execute and deliver, at its sole cost and expense, upon Administrative Agent's written request, any documents necessary to cause the specific assignment of any particular Lease or any other document or instrument, the assignment of which is necessary, proper or desirable in Administrative Agent's judgment to carry out the purposes of this assignment of Leases and Rents, including any consents to this assignment of Leases and Rents. In addition, Trustor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any tenant thereunder, and shall pay on demand all costs and expenses, including attorneys' fees that Administrative Agent may incur in connection with Administrative Agent's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Administrative Agent until repaid by Trustor.

**2.9 Application of Rents.** All Rents collected following an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including attorneys'

fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor under the Leases, and then to the Secured Obligations. Administrative Agent or the receiver shall be liable to account only for those Rents actually received.

**2.10 Utah Uniform Assignment of Rents Act.** This Section 2 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-26-101 et seq. (the "**Act**"), and in the event of any conflict or inconsistency between the provisions of this Section 2 and the provisions of the Act, the provisions of the Act shall control and Administrative Agent shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

### **3. SECURITY ASSIGNMENT OF CONTRACTS.**

**3.1 Assignment.** To the fullest extent not prohibited by applicable Laws, Trustor hereby grants, assigns, and pledges to Administrative Agent, for the ratable benefit of Administrative Agent and the Lenders, all of Trustor's right, title, and interest in and to all of the Contracts as security for the Secured Obligations.

**3.2 Trustor's Covenants.** Trustor hereby covenants and represents to Administrative Agent as follows:

**3.2.1** Trustor shall punctually observe, perform, and discharge each and every obligation, covenant, condition, and agreement of the Contracts to be performed by Trustor.

**3.2.2** Trustor shall enforce performance by the other part(y)(ies) to any Contract, of each and every obligation, covenant, condition and agreement to be performed by such other part(y)(ies).

**3.2.3** Trustor shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in any Contract. In addition, Trustor shall not consent to, suffer or permit any future assignment or transfer of any material Contract by any party without Administrative Agent's prior written consent in each instance.

**3.2.4** Trustor shall not materially alter, amend, modify or terminate any of the Contracts without the prior written consent of Administrative Agent, except for service contracts entered into in the ordinary course of business.

**3.2.5** Upon Administrative Agent's request following an Event of Default, Trustor shall deliver to Administrative Agent all of the original Contracts and all modifications, extensions, renewals, amendments, and other agreements relating thereto.

**3.2.6** Trustor shall execute and deliver, at its sole cost and expense, upon Administrative Agent's written request, any documents necessary to cause the specific assignment of any particular Contract or any other document or instrument, the assignment of which is necessary, proper or desirable in Administrative Agent's judgment to carry out the purposes of this assignment of Contracts, including any consents to this assignment of Contracts.

**3.3 Administrative Agent's Remedies upon Default.** Upon the occurrence of an Event of Default, Administrative Agent, at its sole option, and without any notice whatsoever to Trustor, and without assuming any of the obligations of Trustor under the Contracts, shall have the right (but not the obligation) and is hereby authorized to: (a) cure any default of Trustor in such manner and to such extent as Administrative Agent may deem necessary to protect the security hereof; (b) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Administrative Agent; (c) demand, receive, and enforce payment of all amounts that may be or become payable to Trustor under any of the Contracts; (d) exercise and enforce by suit or otherwise any remedies against other parties to the Contracts for breaches of the terms and conditions of the Contracts; (e) enter into other contracts or agreements, in the name of either Trustor or Administrative Agent, with such third parties as Administrative Agent may in its discretion select, and upon such terms and conditions as Administrative Agent in its reasonable discretion may determine; (f) compromise amounts due under the Contracts; (g) maintain or dismiss suits with respect to the Contracts; (h) delegate any and all rights and powers given to Administrative Agent by this assignment of Contracts;



(i) perform any obligation, covenant or agreement of Trustor under any of the Contracts, and, in exercising any such powers, paying all necessary costs and expenses, employing counsel and incurring and paying attorneys' fees; (j) appear in any bankruptcy, insolvency or reorganization proceeding involving any party to the Contracts and collect any award or payment due Trustor pursuant to any such proceeding; and/or (k) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of this assignment of Contracts. All such actions shall be taken at the expense of Trustor.

**3.4 No Liability of Administrative Agent or Lenders.** Neither Administrative Agent nor any of the Lenders shall be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Contracts, or by reason of this assignment of Contracts. Further, nothing in this Deed of Trust shall obligate Administrative Agent or any of the Lenders to assume any obligations under any Contract, unless and until Administrative Agent and/or any of the Lenders become the owner of the Property and affirmatively assumes a particular Contract in writing.

**3.5 Instructions to Contracting Parties.** Upon an Event of Default, this assignment of Contracts constitutes an irrevocable direction to and full authority from Trustor to any other party to any Contract to pay directly to Administrative Agent, upon Administrative Agent's request, all amounts that may be or become due to Trustor. No proof of the occurrence of an Event of Default shall be required. Any such contracting party is hereby authorized by Trustor to rely upon and comply with any notice or demand by Administrative Agent for the payment to Administrative Agent of any amounts that may be or become due under its Contract, or for the performance of any obligations under such Contract.

**3.6 Application of Income.** Notwithstanding any other provision of this Deed of Trust, the payments, proceeds and income collected by Administrative Agent with respect to the Contracts may be applied, in whatever order Administrative Agent in its discretion may determine, to the payment of any costs and expenses, to the payment of taxes, special assessments and insurance premiums that become due and delinquent on the Property, to the Secured Obligations, or to any liens or encumbrances on the Property or any personal property of Trustor.

**3.7 Interpretation.** The terms of any separate assignment of Contracts or assignment of construction documents shall supersede and control over any inconsistent terms of this assignment of Contracts.

#### **4. SECURITY AGREEMENT AND FINANCING STATEMENT.**

**4.1 Security Agreement.** The parties intend for this Deed of Trust to create a lien on the Property, a collateral assignment of and granting a security interest in the Leases and Rents, and a security assignment of Contracts, all in favor of Administrative Agent, for the ratable benefit of Administrative Agent and the Lenders. The parties acknowledge that some of the Property and some or all of the Leases, Rents and Contracts may be determined under applicable Laws to be personal property or fixtures. To the extent that any Property (including the Leases, Rents, or Contracts), is or may be determined to be personal property or fixtures, Trustor, as debtor, hereby grants to Administrative Agent, as secured party, for the ratable benefit of Administrative Agent and the Lenders, a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under Chapter 9a of the Uniform Commercial Code of the state in which the Premises are located, as amended or recodified from time to time (the "**Project State UCC**"), covering all such Property.

#### **4.2 Perfection of Security Interest.**

**4.2.1** Trustor hereby irrevocably authorizes Administrative Agent, at any time and from time to time, to prepare and file, in any filing office in any Uniform Commercial Code jurisdiction necessary to perfect the security interests granted herein, any financing statements and amendments thereto that (a) indicate the "collateral" (i) as all assets of Trustor related to the Project or words of similar effect, regardless of whether any particular asset included in the collateral falls within the scope of Chapter 9a of the Project State UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information for the sufficiency of the filing or acceptance of any financing statement or amendment by the filing office, including whether Trustor is an organization, the type of organization and

any organization identification number issued to Trustor. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Administrative Agent and agrees that it will not do so without the prior written consent of Administrative Agent, subject to Trustor's rights under Section 9a-509 of the Utah Uniform Commercial Code. Trustor agrees to furnish any such information to Administrative Agent promptly upon Administrative Agent's request.

**4.2.2** Trustor shall pay all fees and costs that Administrative Agent may incur in filing one or more financing statements and such other documents as Administrative Agent may from time to time require to perfect or continue the perfection of Administrative Agent's security interest in any Property and in obtaining such record searches as Administrative Agent may reasonably require to confirm the perfection and priority of the security interests granted herein.

**4.2.3** Trustor shall cooperate with Administrative Agent in any way necessary to perfect and continue the perfection of Administrative Agent's security interest in any part of the Property.

**4.2.4** If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust as a lien on the Project or the rights or obligations of the parties under it.

**4.2.5** Trustor shall not terminate any financing statement filed to perfect Administrative Agent's security interest without Administrative Agent's express written consent.

**4.2.6** It shall be an immediate Event of Default if Trustor fails to execute such additional documentation or to take such further actions necessary to perfect Administrative Agent's security interest at Administrative Agent's reasonable request, or if Trustor fails to comply with the terms of any such agreements that may be established pursuant to the terms hereof.

**4.3 Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under Chapter 9a of the Project State UCC, covering any Property that now is or later may become fixtures attached to the Premises or Improvements.

#### **4.4 Representations, Warranties, and Covenants.**

**4.4.1** Trustor represents and warrants to Administrative Agent that (a) Trustor's exact legal name is as set forth on signature page of this Deed of Trust, which name is stated to be the Trustor's name on the public organic record most recently filed with the Trustor's jurisdiction of organization; (b) Trustor is an organization of the type, and is organized in the jurisdiction, set forth on the signature page of this Deed of Trust; (c) Trustor's organizational identification number, if any, is set forth on the signature page of this Deed of Trust; (d) Trustor's address set forth in the preamble of this Deed of Trust is its principal place of business and the location of its chief executive offices and the address at which it will keep its Books and Records.

**4.4.2** Trustor shall not, without prior written notice to Administrative Agent: (a) change the location of its principal place of business or chief executive office from that specified in the preamble of this Deed of Trust; (b) change its name, identity or corporate structure in a manner that would affect the perfection or priority of Administrative Agent's financing statement(s) against all or any portion of the Property without further action by Administrative Agent; or (c) change the jurisdiction of its incorporation or organization. In addition, Trustor shall keep all Property that is personal property, to the extent not delivered to Administrative Agent, at the Project or such other locations as have been disclosed in writing to Administrative Agent, and Trustor shall not remove the personal property from such locations without providing written notice to Administrative Agent of the new location of such personal property.

**4.4.3** Trustor will fully and punctually perform any duty required of it under or in connection with any of the Property that is personal property, and will not take any action that would impair, damage or destroy Administrative Agent's rights to such Property or the value thereof. Trustor will timely take any and all action reasonably required to maintain the continued performance by every other party to any agreement comprising the Property.

**4.5 Uniform Commercial Code Remedies.** Following an Event of Default, Administrative Agent may exercise any or all of the remedies granted to a secured party under the Project State UCC.

**4.6 Construction Mortgage.** As this Deed of Trust secures advances to be used either for the acquisition of the Premises or the construction of improvements thereon, or both, this Deed of Trust also constitutes a "construction mortgage" or "construction deed of trust" under the Uniform Commercial Code in effect in the state where the Premises are located.

**5. COMMON INTEREST OWNERSHIP LAWS.**

Trustor hereby covenants and agrees not to file or record any declaration or constituent condominium document which would subject the Property to the Utah Condominium Ownership Act, or any other law later enacted or effective related to condominiums or common interest ownership communities, without Administrative Agent's prior written consent and any attempt by Trustor to do so shall be null and void and at Administrative Agent's option, shall be an Event of Default under this Deed of Trust.

**6. RIGHTS AND DUTIES OF THE PARTIES.**

**6.1 Representations and Warranties.** Trustor represents, warrants, and covenants that:

**6.1.1** Trustor lawfully possesses and holds indefeasible fee simple title to all of the Premises and Improvements, subject only to the Permitted Encumbrances;

**6.1.2** Trustor has or will have good title to all Property other than the Premises and Improvements, free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office, except for Permitted Encumbrances;

**6.1.3** True, correct and complete copies of the Contracts and Leases have been delivered to Administrative Agent, including all amendments, modifications, exhibits and addenda thereto;

**6.1.4** Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Leases, Rents, and Contracts, there are no outstanding assignments of the Leases, Rents, or Contracts, Trustor is the absolute owner of the landlord's interest in the Leases, and Trustor has performed no act or executed any other instrument that might prevent Administrative Agent from enjoying and exercising any of its rights and privileges evidenced by this Deed of Trust with respect to the Leases, Rents, and Contracts;

**6.1.5** No Rents have been discounted, released, waived, compromised or otherwise discharged except for prepayment of Rent of not more than one (1) month prior to the accrual thereof;

**6.1.6** No default exists under any of the Leases or Contracts by any party and no fact or circumstance exists under any of the Leases or Contracts that, with the lapse of time or giving of notice or both, would constitute a default by any party under such Leases or Contracts;

**6.1.7** The Leases and Contracts were duly executed, are in full force and effect, and are the valid and binding obligations of the parties thereto and are enforceable in accordance with their respective terms;

**6.1.8** Upon recording of this Deed of Trust in the real estate records of the county where the Premises are located and the filing of a UCC financing statement in the applicable Uniform Commercial Code jurisdiction, this Deed of Trust and such UCC financing statement will create a first and prior lien on the Property;

**6.1.9** The Property includes all property and rights that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

**6.1.10** To Trustor's knowledge, the Project Licenses held by Trustor include all licenses and permits necessary for the occupancy and operation of the Project; the Project Licenses are in full force and effect; Trustor has at all times complied with all material terms and requirements of the Project Licenses, and Trustor has received no notices contrary to the foregoing; no suspension, revocation or cancellation of the Project Licenses is threatened, and no event has occurred, nor do any circumstances exist that may (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License; and all applications required to have been filed for the renewal of any Project License have been duly filed on a timely basis with the appropriate authority, and all other required filings have been made with respect to the Project Licenses on a timely basis with the appropriate authority.

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

**6.3 Use of Property.** Unless required by applicable Laws or unless Administrative Agent has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Trustor shall not initiate or acquiesce to a change in the zoning classification of the Property without Administrative Agent's prior written consent. Trustor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime or improvement district.

**6.4 Taxes, Assessments, Liens, Charges and Encumbrances.** Trustor shall pay, prior to delinquency, all taxes, levies, charges, assessments, water and sewer rates, rents insurance premiums, charges, and impositions, attributable to the Property. Trustor shall immediately discharge any lien on the Property that is not a Permitted Encumbrance, and promptly notify Administrative Agent if a mechanic's lien is filed against the Property. Trustor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim if Trustor complies with all applicable law permitting such contest and, to the extent required by applicable law, posts a statutory lien bond that removes such lien from title to the Project within twenty (20) days after the earlier of (a) Trustor's knowledge that the lien exists or (b) written notice by Administrative Agent to Trustor of the existence of the lien. Failure to comply with all applicable law permitting such contest and, to the extent required by applicable law, to remove the lien from title to the Project within such twenty-day period shall constitute an immediate Event of Default. Administrative Agent shall continue to disburse Loan proceeds to Trustor pursuant to the Loan Agreement as long as Trustor is contesting any such lien or claim in good faith in compliance with the terms of this Section 6. 4..

**6.5 Damages and Insurance and Condemnation Proceeds.** In the event of any casualty or condemnation of the Property, the following provisions shall govern:

**6.5.1 Application of Insurance Proceeds.** In the event of any loss, Trustor shall give prompt written notice thereof to the insurance carrier and Administrative Agent. Trustor hereby authorizes Administrative Agent as Trustor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Administrative Agent's or Trustor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Administrative Agent shall have no obligation to do so. Administrative Agent shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

**6.5.1.1** The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Notes shall be without imposition of any prepayment fee otherwise payable under the Notes, but shall not extend or postpone the due dates of the installment payments under the Notes, or change the amounts thereof, or

**6.5.1.2** The reimbursement of Trustor, under Administrative Agent's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Administrative Agent may, at its option, condition the reimbursement on Administrative Agent's approval of the plans and specifications of the

reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Administrative Agent may reasonably require.

**6.5.2 Repair or Replacement.** Notwithstanding Section 6.5.1 above, Administrative Agent shall make insurance proceeds available to Trustor to pay for costs associated with the repair or restoration of the Property, provided the following conditions are satisfied:

**6.5.2.1** There is no Event of Default hereunder nor does any event or condition then exists which with the giving of notice, the passage of time, or both, will constitute an Event of Default.

**6.5.2.2** The following conditions shall have been satisfied: (i) Trustor shall have furnished to Administrative Agent and Administrative Agent shall have approved a detailed budget and cost breakdown for the restoration and rebuilding work, describing the nature and type of expenses and the cost thereof estimated by Trustor for such restoration and rebuilding work, including, without limitation, the cost of materials and supplies, architect's, engineer's and designer's fees, general contractor's fees, and the anticipated monthly disbursement schedule; (ii) Administrative Agent shall have reviewed and approved the construction contract for the repair and restoration, and if required by Administrative Agent, Administrative Agent shall have received payment and performance bonds with dual obligee rider; (iii) Administrative Agent shall have received evidence satisfactory to it that the insurance proceeds are adequate to restore the Property to its condition immediately prior to the casualty, and if the proceeds are insufficient, Administrative Agent shall have received from Trustor the amount of the deficiency for disbursement with the insurance proceeds; (iv) Administrative Agent shall have received evidence satisfactory to it that Trustor has funds available to it sufficient to pay all operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration; (v) Trustor shall have furnished to Administrative Agent and Administrative Agent shall have approved plans and specifications for the restoration or rebuilding work, and written evidence satisfactory to it that the same has been approved by all governmental authorities having jurisdiction over the Property; (vi) in Administrative Agent's judgment, the rebuilding and restoration work can be completed at least five (5) months prior to the maturity date of the Notes, as such date may be extended; and (vii) Administrative Agent must be satisfied that the leases of the Property will remain in full force and effect pending the completion of the repairs, or Administrative Agent shall have received evidence satisfactory to it that upon completion of the repair or restoration work, the Property will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations.

**6.5.2.3** Each disbursement of the insurance proceeds shall be made in accordance with Administrative Agent's then standard procedures for disbursement of construction loan proceeds.

**6.5.2.4** Trustor shall execute and deliver to Administrative Agent such additional security documents and instruments as Administrative Agent deems reasonably necessary to continue and perfect the security interest in the Property which is granted in this Deed of Trust.

**6.5.3 Condemnation.** Trustor shall promptly notify Administrative Agent of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Trustor shall appear in and prosecute any such action or proceeding unless otherwise directed by Administrative Agent in writing. Trustor authorizes Administrative Agent, at Administrative Agent's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Administrative Agent's or Trustor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Administrative Agent, and all proceeds of any such awards, payments, damages, or claims shall be paid to Administrative Agent, for the ratable benefit of Administrative Agent and the Lenders. Administrative Agent shall apply any such proceeds in the manner and upon the terms and conditions set forth in Sections 6.5.1 and 6.5.2 above relating to the application of insurance proceeds.

**6.5.4 Duty to Repair and Maintain.** Except to the extent that insurance or condemnation proceeds are applied to payment of the Secured Obligations, nothing herein contained shall be deemed to excuse Trustor from restoring, repairing, or maintaining the Property as provided in Section 6.6, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

**6.6 Maintenance and Preservation of Property.**

**6.6.1** Trustor shall insure the Property as required by the Loan Agreement and keep the Property, including improvements, fixtures, equipment, machinery, and appliances, in good repair and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Trustor when necessary to keep such items in good repair in good condition and repair.

**6.6.2** Neither Trustor nor any Tenant shall remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other land use classification that affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Administrative Agent's express prior written consent in each instance.

**6.6.3** If all or part of the Improvements becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Improvements in a good and workmanlike manner in accordance with sound building practices, regardless of whether Net Claims Proceeds are available for disbursement pursuant to the terms of the Loan Agreement.

**6.6.4** Trustor shall take all action necessary to keep the Property at all times in compliance with: (a) all applicable Laws and all orders of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen, including the Americans with Disabilities Act; and (b) all public and private covenants, conditions, restrictions and equitable servitudes affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on the Property if doing so could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Agreement.

**6.6.5** Trustor shall not commit waste or permit impairment or deterioration of the Property.

**6.6.6** Trustor shall not abandon the Property.

**6.6.7** Trustor shall give notice in writing to Administrative Agent, appear in and defend any action or proceeding purporting to affect the Property, the security of this Deed of Trust or the rights or powers of Administrative Agent or Trustee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Administrative Agent.

**6.6.8** Trustor shall perform all other acts that from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

**6.7 Preservation of Project Licenses.**

**6.7.1** Trustor shall, within twenty (20) days after demand by Administrative Agent, deliver to Administrative Agent a written statement certifying any condition or state of facts in connection with the Project Licenses that is reasonably requested by Administrative Agent;

**6.7.2** Trustor shall not take any action or make any omission that would (a) constitute or result in a violation of or a failure to comply with any material term or requirement of any Project License, or (b) result in the revocation, withdrawal, suspension, cancellation or termination of any Project License;

**6.7.3** Trustor shall cause all filings for the renewal of any Project License to be made on a timely basis with the appropriate authority; and

**6.7.4** Trustor shall notify Administrative Agent immediately of any notice or claim known to Trustor alleging a material violation of any Project License or threatening to revoke, withdraw, suspend, cancel, or terminate any Project License, and Trustor shall take all action necessary to defend such allegation and, as applicable, reinstate such Project License.

**6.8 Releases, Extensions, Modifications and Additional Security.** From time to time, Administrative Agent may perform any of the following acts without incurring any liability, giving notice to any person, or prejudicing its rights under this Deed of Trust:

**6.8.1** Release any person liable for payment of any Secured Obligation;

**6.8.2** Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

**6.8.3** Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

**6.8.4** Alter, substitute or release any property securing the Secured Obligations;

**6.8.5** Consent to the making of any plat or map of the Property or any part of it;

**6.8.6** Join in granting any easement or creating any restriction affecting the Property;

**6.8.7** Join in any subordination or other agreement affecting this Deed of Trust or the lien of it;

**6.8.8** Apply any other security for the Secured Obligations held by Administrative Agent; and

**6.8.9** Release the Property or any part of it.

**6.9 Protection of Administrative Agent's Security.**

**6.9.1** If there occurs a Default or Event of Default under this Deed of Trust or the other Loan Documents, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Administrative Agent therein, including eminent domain, insolvency, enforcement of local Laws, or arrangements or proceedings involving a debtor in bankruptcy or a decedent, then Administrative Agent, at Administrative Agent's option, may cure any breach or default of Trustor, make such appearances, disburse such sums, enter upon the Premises and Improvements, and/or take such action as Administrative Agent deems necessary, in its sole discretion to protect Administrative Agent's security and the first priority lien of this Deed of Trust. Such actions may include, without limitation: (a) appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Administrative Agent under, this Deed of Trust; (b) paying, purchasing, contesting, or compromising any encumbrance, tax, assessment, charge, lien or claim of lien that is or, in Administrative Agent's reasonable judgment, may be senior in priority to this Deed of Trust, such judgment of Administrative Agent to be conclusive as among the parties to this Deed of Trust; (c) purchasing fuel and providing utilities; (d) obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; (e) otherwise caring for and incurring expenses to protect any and all of the Property; (f) employing counsel, accountants, contractors, and other appropriate persons to assist Administrative Agent; and/or (g) such other actions reasonably necessary to protect Administrative Agent's security.

**6.9.2** Nothing contained in this Deed of Trust shall require Administrative Agent or any of the Lenders to incur any expense or take any action hereunder.

**6.9.3** The procurement of insurance or the payment of taxes or other liens or charges by Administrative Agent shall not be a waiver of the right of Administrative Agent to accelerate the maturity of any of the Secured Obligations. Administrative Agent's receipt of any Claims Proceeds shall not operate to cure or waive any Default or Event of Default.

**6.10 Release and Reconveyance.** When all of the Secured Obligations have been paid in full and all fees and other sums owed by Trustor under this Deed of Trust and the other Loan Documents have been received, Administrative Agent shall request that Trustee reconvey this Deed of Trust and release the lien created thereby, and release all notes and instruments evidencing the Secured Obligations. Trustor shall pay any costs of preparation and recordation of such reconveyance and releases. In the reconveyance, the grantee may be described as "the person or persons legally entitled thereto," and the recitals of any matters or facts shall be conclusive proof of their truthfulness. Neither Administrative Agent nor Trustee shall have any duty to determine the right of persons claiming to be rightful grantees of any reconveyance.

**6.11 Compensation, Exculpation, Indemnification.**

**6.11.1 Compensation.**

**6.11.1.1** Trustor agrees to pay or reimburse Administrative Agent for all amounts advanced by Administrative Agent in connection with Section 6.9 and Section 6.10 above.

**6.11.1.2** Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Administrative Agent when the law provides no maximum limit, for any services that Administrative Agent or Trustee may render in connection with this Deed of Trust, including exercising their rights with respect to the Leases, Rents, and Contracts, providing a statement of the Secured Obligations, or releasing the lien of this Deed of Trust. Trustor also agrees to pay or reimburse all of Administrative Agent's and Trustee's costs and expenses that may be incurred in rendering any such services, including all costs of administering the Leases and Contracts.

**6.11.1.3** Whether or not any lawsuit is filed, Trustor agrees to pay or reimburse Administrative Agent or Trustee, as applicable, for all costs, expenses, or other advances that may be incurred or made by Administrative Agent or Trustee in any litigation or proceeding affecting this Deed of Trust, the Loan Documents, or the Property (including probate, discretionary review, bankruptcy, and on appeal), and any efforts to enforce any terms of this Deed of Trust, exercise any rights or remedies afforded to Administrative Agent or Trustee hereunder, under the other Loan Documents, or at law or in equity, or defend any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other Legal Expenses, receiver's fees, and any cost of evidence of title.

**6.11.1.4** Trustor further agrees to pay all costs, expenses, and other advances that may be incurred or made by Administrative Agent and/or Trustee in connection with one or more Foreclosure Sales (as defined below) of the Property.

**6.11.1.5** All such expenditures, advances, costs, and expenses made or incurred by Administrative Agent or Trustee shall be immediately due and payable by Trustor, with interest thereon at the Default Rate, and shall be secured by this Deed of Trust.

**6.11.2 Exculpation.** Neither Lenders, Administrative Agent nor Trustee shall be directly or indirectly liable to Trustor or any other person as a consequence of any of the following, and Trustor expressly waives and releases all liability of the types described below, and agrees not to assert or impose any such liability against or upon Lenders, Administrative Agent or Trustee:

**6.11.2.1** Administrative Agent's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Administrative Agent and/or Trustee in this Deed of Trust or any of the other Loan Documents;

**6.11.2.2** Administrative Agent's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust, including any of the Leases or Contracts; or



**6.11.2.3** Any loss sustained by Trustor or any third party resulting from Administrative Agent's failure to lease the Property, or from any other act or omission of Administrative Agent in managing the Property, after an Event of Default, unless the loss is caused solely by the willful misconduct or bad faith of Administrative Agent.

**6.11.3 INDEMNIFICATION.** TRUSTOR AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY THE ADMINISTRATIVE AGENT, ALL OF THE LENDERS, AND THE TRUSTEE FROM AND AGAINST ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER COSTS AND EXPENSES THAT EITHER OF THEM MAY SUFFER OR INCUR (EXCEPT TO THE EXTENT ARISING FROM SUCH PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT):

**6.11.3.1** In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law or in equity;

**6.11.3.2** Arising out of or resulting from the assignment of Leases and Rents as set forth above, including claims or demands for security deposits from Tenants deposited with Trustor, and from and against any and all claims and demands whatsoever that may be asserted against Administrative Agent to satisfy any obligations of the landlord under the Leases;

**6.11.3.3** Arising out of or resulting from the assignment of Contracts as set forth above, including the exercise or enforcement of any of the rights of Trustor thereunder;

**6.11.3.4** Because of any failure of Trustor to perform any of its obligations;

**6.11.3.5** Because of any alleged obligation of or undertaking by Administrative Agent and/or Trustee to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents;

**6.11.3.6** By reason of (a) suspension, revocation, cancellation, or termination of any Project License or (b) any alleged obligation or undertaking on the part of Administrative Agent or Trustee to perform or discharge any of the terms of, or any agreements or Laws pertaining to, the Project Licenses; or

**6.11.3.7** By reason of Administrative Agent's security interest in the Project Licenses.

Such indemnity shall include, all costs, expenses and attorneys' fees incurred by Administrative Agent and/or any of the Lenders in connection with such matters, together with interest on the indemnified liabilities at the Default Rate from the date paid or incurred by such party until repaid by Trustor, and shall be immediately due and payable to such party by Trustor upon demand and shall be secured by this Deed of Trust. This agreement by Trustor to hold harmless, indemnify, and defend Administrative Agent, any of the Lenders, and Trustee shall survive the release and cancellation of any or all of the Secured Obligations, the full or partial release of this Deed of Trust, and any foreclosure of this Deed of Trust, or transfer by deed in lieu thereof.

**6.11.4 Payment by Trustor.** Trustor shall satisfy all obligations to pay money arising under this Deed of Trust and the other Loan Documents immediately upon demand by Administrative Agent. Each such obligation shall be added to, and considered to be part of, the principal of the Notes, and shall bear interest at the Applicable Rate or Default Rate, as applicable, from the date the obligation arises.

**6.12 Defense and Notice of Claims and Actions.** At Trustor's sole expense, Trustor shall protect, preserve, and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Administrative Agent created under it, against all adverse claims. Trustor shall give Administrative Agent prompt notice in writing if any claim is asserted that does or could affect any such matters, or if any action or proceeding is commenced that alleges or relates to any such claim.

**6.13 Subrogation.** Administrative Agent and the Lenders shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Administrative Agent and/or any of the Lenders in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

**6.14 Site Visits, Observation and Testing.** Administrative Agent and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Administrative Agent has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Administrative Agent, its agents or representatives shall impose any liability on any of Administrative Agent, its agents or representatives. In no event shall any site visit, observation or testing by Administrative Agent, its agents or representatives be a representation that Hazardous Material is or is not present in, on or under the Property, or that there has been or shall be compliance with any Laws pertaining to Hazardous Material or any other applicable Laws. Neither Trustor nor any other party is entitled to rely on any site visit, observation or testing by any of Administrative Agent, its agents or representatives. Neither Administrative Agent, nor its agents or representatives owe any duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Prior to an Event of Default, Administrative Agent shall give Trustor reasonable notice before entering the Property, and Administrative Agent shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section. Trustor shall bear all expense of any site visit, observation or testing.

**6.15 Books and Records.** Trustor agrees to maintain full and accurate records and books of account prepared in a manner reasonably acceptable to Administrative Agent covering any of the Property and to deliver, upon request, to Administrative Agent such of the books as relate to the Property, including all invoices, shipping documents, contracts, orders, order acknowledgments, correspondence and other instruments and papers in Trustor's possession. Administrative Agent shall at all reasonable times have free access to Trustor's ledgers, books of account and other written records evidencing or relating to the Property and the right to make and retain copies or memoranda of the same.

**7. INTENTIONALLY DELETED.**

**8. UNAUTHORIZED TRANSFERS.**

**8.1 Definitions.**

**8.1.1 "Unauthorized Transfer"** means any Transfer not expressly permitted under the Loan Agreement or consented to by Administrative Agent in writing in advance of the Transfer.

**8.1.2 "Transfer"** means (a) any sale, transfer, lease, conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation, or other disposition, whether voluntary or involuntary, of (i) all or any portion of the Project or other security for the Loan, (ii) all or any portion of Trustor's right, title, and interest (legal or equitable) in and to the Project or any other security for the Loan, or (iii) any interest in Trustor or any Guarantor, or any interest in any entity that directly or indirectly holds an interest in, or directly or indirectly controls, Trustor or any Guarantor, including any Transfer resulting from the death of an individual Trustor or Guarantor, or (b) any material change in the management of Borrower or any Guarantor.

**8.2 Transfers.** Trustor acknowledges that Administrative Agent and the Lenders are making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Administrative Agent's reliance, and the reliance of the Lenders, Trustor agrees that Trustor shall not make or acquiesce in the making of any Unauthorized Transfer without Administrative Agent's prior express written consent to the particular transaction and the transferee. Administrative Agent may withhold such consent in its sole discretion.

**8.2.1** Any Unauthorized Transfer shall be null and void, and of no effect, and shall also constitute, at Administrative Agent's option, an immediate Event of Default by Trustor under the Loan Documents. If any Unauthorized Transfer occurs, Administrative Agent may, in its sole discretion, declare all of the Secured Obligations to

be immediately due and payable, and Administrative Agent may invoke any rights and remedies provided by this Deed of Trust and any of the other Loan Documents.

**8.2.2** As a condition of approving any Unauthorized Transfer, Administrative Agent may impose such requirements and conditions as it determines are appropriate in its reasonable discretion. In connection with Administrative Agent's approval of any Unauthorized Transfer, Trustor and the assuming party shall pay, in advance, any and all reasonable costs and expenses incurred by Administrative Agent, including reasonable attorneys' and accountants' fees.

**8.2.3** No approval of any Transfer shall cause a release of Trustor or any Guarantor from any liability under the Loan Documents without Administrative Agent's prior written consent, which consent may be freely withheld in Administrative Agent's sole discretion.

## **9. DEFAULT AND REMEDIES.**

**9.1 Events of Default.** Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (each an "**Event of Default**" and some or all, collectively, "**Events of Default**").

**9.1.1** Failure of Trustor to (a) make any payment required under this Deed of Trust within fifteen (15) days after demand, if due on demand, or when otherwise due, or (b) perform or observe any agreement, covenant, or condition required under this Deed of Trust within thirty (30) days after written notice from Administrative Agent to Trustor to do so (or if the failure is such that the cure cannot be completed within said thirty (30) day period, failure by Trustor to commence the cure within said thirty (30) day period and thereafter continue the cure with diligence and complete the cure within ninety (90) days after such written notice), unless a different cure period is provided in herein, in which case the specific cure period shall control, or such event is identified as an immediate Event of Default for which no cure period is applicable; *provided, however*, that no cure period shall apply if Trustor received notice from Administrative Agent of the failure of Trustor to perform a similar covenant, agreement, or obligation within the previous twenty-four (24) month period, in which case the failure to perform shall constitute an immediate Event of Default.

**9.1.2** An "Event of Default" occurs under the Loan Agreement or any other Loan Document.

**9.1.3** Any default by Trustor under any Permitted Encumbrance that is not cured within any applicable cure period therefor.

**9.1.4** Any representation, warranty, or statement made herein, in any other Loan Document, or any other material information furnished by Trustor to Administrative Agent or any other holder of any Note, is determined by Administrative Agent to have been false or misleading in any material respect at the time made.

**9.2 Remedies.** At any time after an Event of Default, Administrative Agent shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Lenders or Administrative Agent under the Loan Documents, at law, or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

**9.2.1 Acceleration.** Administrative Agent may declare any or all of the Secured Obligations to be due and payable immediately.

**9.2.2 Additional Advances.** Administrative Agent may terminate any commitment to make any additional advances under the Loan or any other loan secured by this Deed of Trust.

**9.2.3 Receiver.** Administrative Agent shall, as a matter of right, without notice and without giving bond to Trustor or anyone claiming by, under, or through Trustor, and without regard to the solvency or insolvency of Trustor or the then-value of the Property, be entitled to have a general or custodial receiver appointed for all or any part of the Property, and the proceeds, issues and profits thereof. Such receiver shall have all powers and duties prescribed by applicable Laws, all other powers that are necessary or usual in such cases for the protection, possession, control,

management and operation of the Property, the right and power to sell the Property, such rights and powers as Administrative Agent would have, upon entering and taking possession of the Property, and such other rights and powers as the court making such appointment shall confer. Trustor hereby irrevocably consents and agrees to the appointment of such receiver with such rights and powers and shall not oppose any such appointment.

#### **9.2.4 Entry; Protection of Security.**

**9.2.4.1** Administrative Agent, in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, may do the following: (a) enter, take possession of, manage, and operate all or any part of the Property, including taking possession of the then-owner's Books and Records; (b) terminate Trustor's right and license to collect the Rents and administer the Leases, and thereafter collect the Rents, enter into, enforce, modify, or cancel Leases on such terms and conditions as Administrative Agent may consider appropriate, evict Tenants, fix and modify Rents, and employ managers and other personnel to administer the Leases; (c) exercise all of Trustor's rights with respect to the Contracts, and employ managers and other personnel to administer the Contracts; (d) complete construction on and make repairs, replacement and alterations to the Premises and Improvements and to the fixtures, equipment and personal property located in or on the Premises or Improvements; (e) purchase and pay for such additional furniture and equipment as in the reasonable discretion of Administrative Agent may be necessary to maintain a proper rental income from the Property; (f) otherwise care for and incur expenses to protect any and all of the Property; (g) take any action permitted under Section 6.9 above; (h) take any other action Administrative Agent may, in its reasonable discretion, consider necessary and appropriate to protect the security of this Deed of Trust; and (i) employ counsel, accountants, contractors and other appropriate persons to assist Administrative Agent in any of the foregoing.

**9.2.4.2** If Administrative Agent so requests, Trustor shall assemble all of the Property not then located at the Premises and make all of it available to Administrative Agent at the site of the Premises.

**9.2.4.3** Trustor hereby irrevocably constitutes and appoints Administrative Agent as Trustor's attorney-in-fact to perform such acts and execute such documents as Administrative Agent in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

**9.2.4.4** Administrative Agent may take any of the actions permitted under this Section either with or without giving notice to any person.

#### **9.2.5 Lawsuits; Foreclosure.**

**9.2.5.1** Administrative Agent may commence and maintain an action or actions, at law or in equity, in any court of competent jurisdiction, to enforce the payment and/or performance of the Secured Obligations (including 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).

**9.2.5.2** Administrative Agent shall have the right, in one or several concurrent or consecutive proceedings, to judicially or non-judicially foreclose the lien hereof upon the Property or any part thereof (each such proceeding, a "**Foreclosure Sale**"), for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable Laws.

**9.2.5.3** In addition to the right to appoint a receiver upon an Event of Default, Trustee or Administrative Agent may also, at any time after the filing of a complaint to foreclose this Deed of Trust, request appointment of a receiver of the Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment.

**9.2.5.4** If this Deed of Trust is foreclosed by judicial action, and the Property sold at a Foreclosure Sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on the Premises and to the Improvements as may be reasonably necessary for the proper operation, care, preservation,

protection, and insuring thereof. Any sums so paid together with interest thereon at the Default Rate, shall be added to and become a part of the amount required to be paid for redemption from such sale.

**9.2.5.5** To the maximum extent permitted by applicable Laws, Administrative Agent will be entitled to a judgment providing that, if the Foreclosure Sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

**9.2.6 Power of Sale.**

**9.2.6.1** Administrative Agent shall have the right to invoke the power of sale to cause Trustee to sell all or part of the Property in accordance with applicable Laws. Under this power of sale, Administrative Agent shall have the discretionary right to cause Trustee to sell some or all of the Property, including any Property that constitutes personal property, in any combination and in any manner permitted by applicable Laws. Any such Foreclosure Sale pursuant to the power of sale is referred to herein as a "**Trustee's Sale.**"

**9.2.6.2** Before any Trustee's Sale, Administrative Agent or Trustee shall give and record such notice of default and election to sell as may then be required by *Utah Code Annotated* § 57-1-24 through § 57-1-26 or other applicable Laws. When all legally mandated time periods have elapsed, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale, and Administrative Agent may impose such terms and conditions of sale as are permitted or allowed by applicable Laws.

**9.2.6.3** From time to time in accordance with then applicable Laws, Trustee may, and in any event at Administrative Agent's request shall, continue any Trustee's Sale by public announcement at the time and place scheduled for that sale, or may, in its discretion, give a new notice of sale.

**9.2.6.4** Also, Administrative Agent may from time to time discontinue or rescind any notice of default or notice of sale before any Trustee's Sale, by executing and delivering to Trustee a written notice of such discontinuance or rescission. The exercise by Administrative Agent or any Lender of such right of rescission shall not constitute a waiver of any Event of Default then existing or subsequently occurring, or impair the right of Administrative Agent and/or any of the Lenders to execute and deliver to Trustee other declarations or notices of default to satisfy the Secured Obligations, nor otherwise affect any provision, covenant, or condition of any Loan Document, or any of the rights, obligations, or remedies of Trustee, Administrative Agent, or any of the Lenders hereunder or thereunder.

**9.2.7 Other Remedies.** In addition to, but not in lieu of, any other rights and remedies hereunder, Administrative Agent shall have the right to institute suit and obtain a protective or mandatory injunction against Trustor to prevent an Event of Default, as well as the right to damages occasioned by any Event of Default. Administrative Agent may exercise all rights and remedies contained in this instrument (including all rights and remedies with respect to the assignments of Leases and Contracts) or any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Trustor or any other person or entity in favor of Administrative Agent in connection with the Secured Obligations or any part thereof, without prejudice to the right of Administrative Agent thereafter to enforce any appropriate remedy against Trustor. Administrative Agent shall have the right to pursue all remedies afforded to a beneficiary Agent under applicable Laws, and shall have the benefit of all of the provisions of such applicable Laws, including all amendments thereto that may become effective from time to time after the date hereof.

**9.2.8 Sale of Personal Property.** Administrative Agent and/or (as required by applicable Laws) Trustee, shall have the discretionary right to cause some or all of the Property that constitutes personal property to be sold or otherwise disposed of in any combination and in any other manner permitted by applicable Laws.

**9.2.8.1** For purposes of this power of sale, Administrative Agent and/or (as required by applicable Laws) Trustee may elect to treat as personal property any Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Administrative Agent and/or (as required by applicable Laws) Trustee, may dispose of any personal property in any manner permitted by

Chapter 9a of the Project State UCC, including any public or private sale, or in any manner permitted by any other applicable Laws.

**9.2.8.2** In connection with any sale or other disposition of such Property, Trustor agrees that the following procedures constitute a commercially reasonable sale: Administrative Agent shall mail written notice of the sale to Trustor not later than thirty (30) days prior to such sale. Administrative Agent will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Administrative Agent will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Administrative Agent shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

### **9.2.9 Single or Multiple Foreclosure Sales.**

**9.2.9.1** If the Property consists of more than one lot, parcel or item of property, Administrative Agent and/or (as required by applicable Laws) Trustee may (a) designate the order in which the lots, parcels and/or items are to be sold or disposed of or offered for sale or disposition; and (b) elect to dispose of the lots, parcels and/or items through one Foreclosure Sale or multiple Foreclosure Sales. This Section 9.2.9 is subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Project, if consisting of several known lots or parcels, shall be sold.

**9.2.9.2** If Administrative Agent chooses to have more than one Foreclosure Sale, Administrative Agent, at its option, may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Administrative Agent may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property that has not been sold, until all of the Secured Obligations have been paid in full.

### **9.3 Purchase at Foreclosure Sale.**

**9.3.1** At any Foreclosure Sale, any person, including Trustor or Administrative Agent, may bid for and acquire the Property or any part of it to whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Administrative Agent shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Administrative Agent, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws the extent permitted by then applicable Laws.

**9.3.2** To the fullest extent not prohibited by applicable Laws, the sales price of any Property sold at a Foreclosure Sale shall include all expenditures and expenses that may be paid or incurred by or on behalf of Trustee and Administrative Agent in connection with such Foreclosure Sale and enforcement of this Deed of Trust, including attorneys' fees and other legal costs, survey charges, appraiser's fees, inspecting engineer's or architect's fees, fees for environmental studies and assessments, and all additional expenses incurred by Trustee and Administrative Agent with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of a sale decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title.

**9.3.3** Instead of paying cash for such Property, Administrative Agent may credit the sales price of the Property against the Secured Obligations in such order as Administrative Agent in its sole discretion may choose.

**9.3.4** At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, unless other terms and conditions of sale are prescribed by Administrative Agent in accordance with and as permitted by applicable Laws. Trustee shall execute and deliver to the purchaser(s) at such sale a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied.

The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness.

**9.4 Fair Value.** To the extent the applicable Laws require that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by applicable Laws and the additional factors set forth below, and Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

**9.4.1** The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the Foreclosure Sale.

**9.4.2** An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including brokerage commissions, title policy expenses, tax prorations, escrow fees, and other common charges that are incurred by the seller of real property.

**9.5 Tenants.** Administrative Agent shall have the right, at its option, to foreclose this Deed of Trust subject to the rights of any Tenant of the Property.

**9.6 Application of Foreclosure Sale Proceeds.** Administrative Agent shall apply the proceeds of any Foreclosure Sale as follows: *First:* To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually incurred not to exceed the amount which may be provided for in the trust deed; *Second:* To payment of the obligations secured by the Deed of Trust; and, *Third:* The balance, if any, to the person or persons legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

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

## 10. THE TRUSTEE.

**10.1 Certain Rights.** With the approval of Administrative Agent, Trustee shall have the right to take any and all of the following actions: (a) to select, employ and consult with counsel (who may be, but need not be, counsel for Administrative Agent) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through Trustee's agents or attorneys, (c) to select and employ, in and about the execution of Trustee's duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, and Trustee shall not be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (d) any and all other lawful action that Administrative Agent may instruct Trustee to take to protect or enforce Administrative Agent'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 Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken

or proposed to be taken by Trustee hereunder believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for rendering Trustee's services hereunder. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses that may be incurred by Trustee in the performance of Trustee's duties.

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

**10.3 Successor Trustees.** Trustee may resign by giving notice of resignation in writing to Administrative Agent. If Trustee dies, resigns or becomes disqualified from acting in the execution of this trust, or if, for any reason, Administrative Agent, in Administrative Agent's sole discretion and with or without cause, prefers to appoint a substitute trustee or multiple substitute trustees in accordance with the criteria described in *Utah Code Annotated* § 57-1-21, or successive substitute trustees or successive multiple substitute trustees, to act instead of the original Trustee, Administrative Agent shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees in succession) who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the then-existing Trustee. Such appointment shall be executed in accordance with *Utah Code Annotated* § 57-1-22 by any authorized agent of Administrative Agent. Trustor hereby ratifies and confirms any and all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable Laws. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of their duties, rights, and obligations hereunder.

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

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

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

## **11. MISCELLANEOUS PROVISIONS.**

**11.1 Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also



grant further rights to Administrative Agent and/or the Lenders, and contain further agreements and affirmative and negative covenants by Trustor that apply to this Deed of Trust and to the Property.

## **11.2 No Waiver or Cure.**

**11.2.1** Each waiver by Administrative Agent and/or any Lender must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Administrative Agent and/or any Lender to take action on account of any default of Trustor. Consent by Administrative Agent and/or any Lender to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Administrative Agent and/or any Lender's consent to be obtained in any future or other instance.

**11.2.2** If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default, or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Administrative Agent or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Administrative Agent of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

**11.2.2.1** Trustee or Administrative Agent, its agent or a receiver takes possession of all or any part of the Property in the manner provided herein.

**11.2.2.2** Automatic termination of the license to collect Rents and administer the Leases.

**11.2.2.3** Administrative Agent exercises any of its rights under the assignment of Leases and Rents or collects and applies Rents as permitted hereunder, either with or without taking possession of all or any part of the Property or assuming any of the Leases.

**11.2.2.4** Administrative Agent exercises any of its rights under the assignment of Contracts or collects and applies any amounts due under the Contracts, either with or without taking possession of all or any part of the Property or assuming any of the Contracts.

**11.2.2.5** Administrative Agent takes any action to preserve its security hereunder or cure any default of Trustor under the Leases or Contracts.

**11.2.2.6** Administrative Agent or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Administrative Agent under this Deed of Trust.

**11.2.2.7** Administrative Agent makes a site visit, observes the Property and/or conducts tests as permitted under the Loan Documents.

**11.2.2.8** Administrative Agent or Trustee receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

**11.2.2.9** Administrative Agent, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

## **11.3 Powers of Administrative Agent.**

**11.3.1** If Administrative Agent and/or any Lender performs any act that it is empowered or authorized to perform under this Deed of Trust, that act alone shall not release or change the personal liability of any

person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Administrative Agent grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Administrative Agent shall not be required to comply with any demand by the original Trustor that Administrative Agent refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

**11.3.2** Administrative Agent and/or any Lender may take any of the actions permitted under this Deed of Trust regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

**11.3.3** From time to time, Administrative Agent and/or any Lender may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Deed of Trust. Administrative Agent and/or any Lender may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

**11.4 Assignment.** All rights of Administrative Agent hereunder shall inure to the benefit of its successors and assigns, and all obligations of Trustor shall bind its successors and assigns and any subsequent owner of the Property. All rights of Administrative Agent in, to, and under this Deed of Trust shall pass to and may be exercised by any assignee of such rights of Administrative Agent. Trustor hereby agrees that if Administrative Agent gives notice to Trustor of an assignment of said rights, upon such notice, the liability of Trustor to the assignee of Administrative Agent shall be immediate and absolute. Trustor will not set up any claim against Administrative Agent or any intervening assignee as a defense, counterclaim, or setoff to any action brought by Administrative Agent or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases, Rents, or Contracts.

**11.5 No Offset.** Trustor's obligation to timely pay and perform all obligations under the Notes, this Deed of Trust, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Trustor or any guarantor may have or claim against Administrative Agent or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Trustor or any guarantor may have in damages or otherwise against Administrative Agent and/or any Lender or any other person or entity if Trustor maintains a separate action thereon.

**11.6 Imposition of Mortgage Tax.** Trustor shall pay the cost of any Mortgage Tax due in connection with this Deed of Trust or the indebtedness secured hereby. For purposes of this Section, "**Mortgage Tax**" means: (a) a specific tax on mortgages or other security instruments or on all or any part of the indebtedness secured by a mortgage or other security instrument; or (b) a specific tax on the owner of the Property covered by a mortgage or security instrument which the taxpayer is authorized or required to deduct from payments on debt secured by the mortgage or security instrument; or (c) a tax on property covered by a mortgage or security instrument chargeable against a lender, Administrative Agent or trustee or the holder of the note secured by the security instrument; or (d) a specific tax (other than an income tax or a gross receipts tax) on all or any portion of the obligations secured hereby or on payments of principal and interest made by a trustor under a security instrument. If any Mortgage Tax is enacted subsequent to the date of this Deed of Trust, enactment of the Mortgage Tax shall constitute an Event of Default, and Administrative Agent may exercise any or all of the remedies available to it upon the occurrence of any Event of Default, unless the following conditions are met: (i) Trustor can lawfully pay the Mortgage Tax without causing any resulting economic disadvantage or increase of tax to Administrative Agent or Trustee; and (ii) Trustor pays the Mortgage Tax (including any tax on the payment made) within thirty (30) days after notice from Administrative Agent that the tax law has been enacted.

**11.7 Merger.** No merger shall occur as a result of Administrative Agent's acquiring any other estate in or any other lien on the Property unless Administrative Agent consents to a merger in writing.

**11.8 Joint and Several Liability.** If more than one Trustor executes this Deed of Trust, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

**11.9 Successors in Interest.** The terms, covenants, and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties. However, this Section does not waive any prohibitions on assignment or transfer of the Property provided herein or in any of the other Loan Documents.

**11.10 Interpretation.**

**11.10.1** Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions.

**11.10.2** The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

**11.10.3** The word "or" has the inclusive meaning represented by the phrase "and/or."

**11.10.4** No listing of specific instances, items, or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

**11.11 Intentionally Deleted.**

**11.12 Waiver of Statutory Rights.** To the fullest extent not prohibited by Law:

**11.12.1** Trustor hereby agrees that it will not apply for or avail itself of any appraisal, valuation, stay, extension, or exemption Laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such Laws.

**11.12.2** Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety.

**11.12.3** Trustor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Trustor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust, and agrees to take any and all further actions as may be necessary to waive the right of redemption.

**11.12.4** Trustor hereby waives any defense of laches and all statutes of limitation with respect to enforcement of this Deed of Trust.

**11.13 Severability.** If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum or has a material adverse effect on Administrative Agent's security for the Secured Obligations, then Administrative Agent may, at its option, declare all Secured Obligations immediately due and payable.

**11.14 Notices.** Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given when made as provided in the Loan Agreement.

**11.15 Administrative Agent's Lien for Service Charge and Expenses.** At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Administrative Agent not to exceed the maximum amount secured hereby.

**11.16 WAIVER OF TRIAL BY JURY.** TRUSTOR, ADMINISTRATIVE AGENT, AND EACH OF THE LENDERS HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF TRUSTOR, ADMINISTRATIVE AGENT, OR ANY OF THE LENDERS. TRUSTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. TRUSTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND THE LENDERS TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

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

**11.18 Applicable Law.** The creation, perfection, and enforcement of the lien of this Deed of Trust shall be governed by the Laws of the state in which the Premises are located. In all other respects, this Deed of Trust shall be governed by the substantive Laws of the jurisdiction governing the Loan Agreement.

**11.19 Intentionally Deleted.**

**11.20 Counterparts.** This Deed of Trust may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, for the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Deed of Trust may be detached from any counterpart of this Deed of Trust without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Deed of Trust identical in form hereto but having attached to it one or more additional signature pages.

**11.21 Notice of Indemnification.** TRUSTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY TRUSTOR OF ADMINISTRATIVE AGENT FROM CLAIMS OR LOSSES ARISING AS A RESULT OF ADMINISTRATIVE AGENT'S OWN NEGLIGENCE.

**11.22 State Specific Provisions.** With respect to Property that is located in the State of Utah, the following state-specific provisions apply, notwithstanding anything contained herein to the contrary:

**11.22.12 Water Rights.**

**11.22.1.1** Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 6.16, the term "**Governmental Authorities**" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Salt Lake, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Deed of Trust.

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

**11.22.1.3** Trustor shall promptly provide the Administrative Agent with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

**11.22.1.4** Trustor shall promptly pay any and all fees or assessments relating to the shares of stock in any irrigation company and shall promptly provide the Administrative Agent with evidence of each such payment.

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

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

#### **11.22.2 Utah Construction Registry.**

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

**11.22.2.2** Trustor represents and warrants to Administrative Agent that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Administrative Agent by Trustor in writing. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, *lis pendens* or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Property or recorded against the Property.

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

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

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

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

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

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

**11.22.4 Deficiency.** Trustor agrees to pay any deficiency, arising from any cause, to which Administrative Agent may be entitled after applications of the proceeds of any sale, and Administrative Agent may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law.

To the extent the Utah Deed of Trust Act, as now existing or hereafter amended, or other statute requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

**11.22.4.1** The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

**11.22.4.2** An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

**11.22.4.3** Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

**11.22.5 Reinstatement.** If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan within three (3) months of the recordation of a notice of default in accordance with Utah Code Annotated § 57-1-31(1), such party shall pay to Administrative Agent the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31(2), as delivered by Administrative Agent, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. Furthermore, in addition to any Trustor payment obligations under this Deed of Trust, Trustor shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel for accountings and reinstatement quotes as may be required by Utah Code Annotated § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Deed of Trust.

**11.22.6 Notice.** Administrative Agent hereby requests, pursuant to Utah Code Annotated § 57-1-26(3), a copy of any notice of default and that any notice of sale under any deed of trust or mortgage affecting the Property be mailed to it at the address set forth in preamble hereto.

**11.22.7 Foreclosure; Lawsuits.** Administrative Agent shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Administrative Agent or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Administrative Agent's successful bid shall be credited against the Secured Obligations. Without limiting the foregoing, Administrative Agent may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default in accordance with the Utah Uniform Commercial Real Estate Receivership Act, Utah Code Annotated § 78B-21-101, Trustee or Administrative Agent may also, at any time after the filing of a complaint to foreclose this Deed of Trust, request appointment of a receiver of the Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment. Without limiting the foregoing:

**11.22.7.1** Administrative Agent and Trustee, if and as directed by Administrative Agent, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Administrative Agent's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 7.3.3, or specifically enforce any of the covenants hereof.

**11.22.7.2** Administrative Agent and Trustee, if and as directed by Administrative Agent, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Administrative Agent's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 7.3.3, or specifically enforce any of the covenants hereof. Administrative Agent may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to

execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with Utah Code Annotated § 57-1-24 or other applicable law. After the lapse of such time as may then be required by Utah Code Annotated § 57-1-24 through § 57-1-26 or other applicable Law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by Utah Code Annotated §§ 57-1-25 and 57-1-26 or other applicable Law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Administrative Agent may determine (but subject to Trustor's statutory right under Utah Code Annotated § 57-1-27 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 and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Annotated § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with Utah Code Annotated § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Administrative Agent, may bid at the sale.

**11.22.8 Obligations of Environmental Indemnity.** Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the obligations evidenced by or arising under any environmental indemnity made by Trustor or Guarantor with respect to the Premises.

In the event of any inconsistencies between the terms and conditions of this Section 11.22 containing Utah state law provisions and the terms and conditions of any other part of this Deed of Trust, the terms and conditions of this Section shall control and be binding. When necessary to avoid any inconsistency or to ensure compliance with Utah law, any procedures provided for in this Deed of Trust that are inconsistent with those required by Utah law shall be modified by and replaced with the procedures or requirements of the laws of the State of Utah.

**11.22.9 Status of the Property.** Trustor acknowledges that the stated purpose for which this Deed of Trust is given is to finance, refinance or construct residential rental property. Accordingly, to permit Administrative Agent to comply with *Utah Code Annotated* § 57-1-25 and other applicable law, Trustor agrees that promptly upon Administrative Agent's request, it will provide to an Administrative Agent a written summary of the number of dwelling units within the improvements by unit or apartment number and the mailing address for each such unit or apartment. Trustor agrees to promptly update such written summary and provide the same to Administrative Agent from time to time upon request from Administrative Agent. To further allow Administrative Agent to comply with *Utah Code Annotated* § 57-1-25 and other applicable law, Trustor agrees to provide a written roll, copies of all tenant leases, a summary list of tenants and addresses by unit or apartment number at least every six months and more frequently at any time upon the request of Administrative Agent.

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

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



**11.22.12 Non-Agricultural Use.** Trustor represents and warrants to Beneficiary that (a) the Property is not used principally for agricultural purposes, and (b) the loan secured by this Deed of Trust was not made primarily for personal, family or household purposes.

**11.22.13 NOTICE RE ORAL AGREEMENTS.** PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**11.23 Incorporation of Exhibits and Riders.** The following Exhibits and/or Riders attached to this Deed of Trust are incorporated herein and expressly made a part hereof by this reference:

**11.23.1 Exhibit A -- Legal Description**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

Executed as of the date of this Deed of Trust.

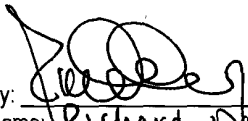
**TRUSTOR/DEBTOR:**

**BWF STAY SV PROPERTY OWNER LLC**  
a Delaware limited liability company

By: BWF STAY SV PROPERTIES LLC  
a Delaware limited liability company  
its manager

By: STAY WVC, LLC  
a Utah limited liability company  
its manager


By: STAY CAPITAL, LLC  
a Utah limited liability company  
its manager

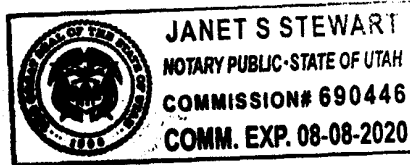
By:   
Name: Richard Day  
Title: Manager

State of Utah )  
County of Salt Lake ) ss.

On this 15<sup>th</sup> day of June, in the year 2020, before me Janet S Stewart, a notary public, personally appeared Richard Day, the manager of STAY CAPITAL, LLC, a Utah limited liability company, the manager of STAY WVC, LLC, a Utah limited liability company, the manager of BWF STAY SV PROPERTIES LLC, the manager of **BWF STAY SV PROPERTY OWNER LLC**, a Delaware limited liability company, proved on the basis of satisfactory evidence to be the persons whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

  
Notary Signature



Deed of Trust - Loan No. \_\_\_\_\_  
4822-4646-5965

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

That certain real property located in Salt Lake County, Utah more particularly described as follows:

LOT 2, SAGE VALLEY SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS RECORDED MAY 1, 2020 AS ENTRY NO. 13259814 IN BOOK 2020P AT PAGE 100, IN THE OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER'S OFFICE.