

**WHEN RECORDED, RETURN TO:**

Royal Neighbors of America  
c/o John Friederich  
230 16<sup>th</sup> Street  
Rock Island, IL 61201

TIN:  
22-35-226-033  
22-35-226-032

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8/3/2021 11:22:00 AM \$40.00  
Book - 11216 Pg - 4175-4202  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 28 P.

**DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT  
AND FIXTURE FILING**  
142410-CAF

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "Deed of Trust"), made as of the 2 day of August, 2021, by and between **BRIGHTON POINTE PARTNERS LLC**, a Utah limited liability company, having an address at P.O. Box 683712, Park City, UT 84068, ("Trustor"), **COTTONWOOD TITLE INSURANCE AGENCY, INC.** ("Trustee"), having an address at 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121, and **ROYAL NEIGHBORS OF AMERICA**, an Illinois fraternal benefit society, having its principal place of business at 230 Sixteenth Street, Rock Island, Illinois 61201 ("Beneficiary");

**WITNESSETH:**

WHEREAS, Trustor deems it necessary to borrow money from Beneficiary for its proper business purposes and to issue and deliver contemporaneously herewith its promissory note as evidence of such indebtedness and to encumber the property hereinafter described as security for the payment of said promissory note; and

WHEREAS, Trustor, being justly indebted to Beneficiary, as lender, has contemporaneously herewith executed and delivered to Beneficiary a promissory note of even date herewith in the principal sum of **Two Million Seven Hundred Thousand Dollars (\$2,700,000.00)**, with interest as therein specified, payable to Beneficiary at the office of The Clawson Group, in Draper, Utah, or at such other place or places as the holder of said promissory note may from time to time in writing direct said principal sum and interest being payable as provided in said promissory note, the maturity date of said promissory note being September 1, 2031, (said promissory note is hereinafter called the "Note");

NOW, THEREFORE, Trustor, in consideration of the premises, of the loan to Trustor evidenced by the Note and of other legally sufficient consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal, interest and premium, if any, on the Note according to its tenor and effect, together with all other sums due hereunder or under any other instrument securing the Note, and to declare the terms and provisions upon and subject to which the Note is to be secured and repaid, has executed and delivered this Deed of Trust.

## GRANTING CLAUSE

The Grant. For the purposes and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, Trustor's interest:

1. All of the real estate described in "Exhibit A" attached hereto and incorporated herein by reference, all tenements and hereditaments thereunto appertaining and all after acquired interests of every kind and nature therein, which real estate (the "Premises") is situated in the County of Salt Lake, State of Utah, together with all buildings, structures, fixtures, appurtenances and improvements thereon situate or which may hereafter be erected or placed thereon, all remainders and reversions in the Premises and all right, title and interest of Trustor in and to all streets, boulevards, avenues or other public thoroughfares in front of and adjoining the Premises, including all easements, licenses and rights-of-way thereunto appurtenant, attached or belonging, and also all right, title and interest of Trustor in and to all strips and gores of land adjacent to the Premises; and

2. All engines and machinery, all heating, lighting, ventilating, cooling, refrigeration and water supply apparatus and fixtures, ovens, furnaces, vent hoods and fans, bathtubs, sinks, water closets, basins, air conditioning units, pipes, faucets, mantels, refrigerators (mechanical or otherwise) dishwashers, disposals, stoves, ranges, clothes washers and dryers, shades, awnings, screens, blinds, rugs, carpets, mirrors, lamps, draperies, elevators, escalators, curtains, hangings, pictures, kitchen cabinets, and all other apparatus, fixtures, equipment (including, without limitation, sprinklers, alarm and monitoring systems, door opening and closing equipment, and all equipment for the removal of dust, debris, snow, refuse or garbage), furniture and furnishings and all replacements thereof, now or hereafter located upon and used or furnished in connection with the letting or operation of the Premises (excluding, however, personal property owned by tenants and not by Trustor and further limited to any interest of Trustor in the property), which are and shall be deemed to be a portion of the security for all indebtedness secured by this Deed of Trust; and

3. All rents, royalties, profits, revenues, incomes and other benefits of and from the property subject or required to be subject to the lien of this Deed of Trust, and all of the estate, right, title and interest of every nature whatsoever of the Trustor in and to the same and every part and parcel thereof; and

4. All right, title and interest of Trustor in and to all leases, occupancy and rental agreements covering the Premises and the buildings, improvements and structures thereon, or any portion thereof, now or hereafter existing or entered into and all right, title and interest of Trustor thereunder, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of a similar nature; and

5. All right, title and interest in and to the following, including the right to receive the same, to-wit:

(a) All proceeds of insurance paid or payable as a result of damage to or destruction of the property described above; and

(b) Any and all awards or payments, including interest thereon, which may be made with respect to the property described above as a result of: (i) the exercise of the right of eminent domain; (ii) the alteration of the grade of any streets or roads; and (iii) any other damage or injury to or decrease in the value of the property described above, in each such instance to the extent of all amounts which may be secured by this Deed of Trust on the date of receipt by the Beneficiary of any such insurance proceeds, awards or payments, and to the extent of reasonable counsel fees (to the extent permitted by law), costs and disbursements incurred by Beneficiary in connection with the collection of any such insurance proceeds, award or payment.

All of the foregoing being hereinafter collectively called the "Property"

TO HAVE AND TO HOLD IN TRUST, WITH POWER OF SALE, all the above granted Property, whether now owned or hereafter acquired, unto the Trustee, in trust for Beneficiary, its successors and assigns, all for the purpose of securing repayment of the Note and payment and performance of all obligations of Trustor under this Deed of Trust, together with all advances, payments or other expenditures made by Beneficiary or Trustee as or for the payment or performance of any such obligations of Trustor to Beneficiary (the "Secured Obligations").

## ARTICLE I

### PARTICULAR COVENANTS OF TRUSTOR

Trustor covenants and agrees as follows:

1.01. Payment of Note. That it will pay the Note in full as herein and in the Note provided and will perform and keep all the covenants and agreements in this Deed of Trust and in all other instruments securing payment of the Note. The Note shall not be prepaid except to the extent permitted by the terms of the Note.

1.02. Title and Lien. Trustor warrants that, except for wording in Exhibit B, Trustor lawfully possesses and holds fee simple title to the Property without limitation on the right to encumber, as herein provided, and that this Deed of Trust is a valid first lien on the Property and all of Trustor's interest therein. Trustor further warrants that at the delivery hereof, it has full power to subject the same to the lien hereof and that it will warrant and defend the title thereto forever against the claims and demands of all persons whomsoever.

That the lien created by this Deed of Trust is a first and prior lien on the Property and that it will keep the Property free from all lien claims of every kind and will protect and defend the title and possession thereof so that this Deed of Trust shall be and remain a first lien thereon until

said debt be fully paid, or if foreclosure sale be had hereunder so that the purchaser at the said sale shall acquire good title in fee simple to the Property free and clear of all liens and encumbrances.

1.03. Further Assurances. That it will, at its expense, do all such further acts and execute, acknowledge, deliver and record financing and continuation statements and all such further instruments as Beneficiary shall require to:

(a) continue, preserve and maintain this Deed of Trust as a valid and subsisting first lien and prior security interest upon the Property enforceable in accordance with the terms and provisions of this Deed of Trust;

(b) preserve and maintain the rights created by any other instruments securing the payment of the Note; and

(c) preserve and maintain the priority of this Deed of Trust and all such other instruments securing the payment of the Note and the record notice thereof so that no rights or liens of others shall gain parity with or priority over this Deed of Trust and the other instruments securing the payment of the Note.

1.04. Taxes, Assessments and Utilities. That it will forthwith pay all taxes, assessments, water and sewer charges and public charges, general and special, of every nature, now existing against the Property and currently due and payable, and pay before delinquent all taxes, assessments, water and sewer charges and public charges, general and special of every nature hereafter levied or assessed thereon. In the event of the enactment after the date hereof of any Federal law or law of the State of Utah deducting from the value of land for the purpose of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of deeds of trust or mortgages or debts secured by deeds of trust or mortgages, or the manner of the collection of any such taxes, so as to affect this Deed of Trust or the debt secured hereby, then, in such case the whole of the unpaid principal sum secured by this Deed of Trust, together with the interest accrued thereon, but without payment of any applicable prepayment premium, shall, at the option of the Beneficiary, without notice to any party, become immediately due and payable; provided, however, Beneficiary agrees that it will not exercise such option to so declare such indebtedness to be immediately due and payable if Trustor shall pay before the same shall be delinquent any tax, imposition or assessment imposed by any such law resulting in Beneficiary having to bear directly or indirectly the whole or any part of any tax, imposition or assessment imposed upon or with respect to the Property or this Deed of Trust or the lien created hereby. Trustor will pay (or cause to be paid) before delinquent all charges held in Trustor's name for gas, electricity, water, sewer or other public utility services furnished to the Property.

In the event Trustor shall fail to pay any of the foregoing before delinquent, Beneficiary may (but shall not be obligated to) pay the same and any interest and penalties thereon and the sums so advanced with all costs and expenses thereof shall be secured hereby in accordance with the provisions of Section 1.09 below.

1.05. Insurance. That it will at all times keep the improvements on the Premises and the personal property, if any, conveyed hereby, insured against loss or damage by fire and the hazards or perils covered by the extended coverage endorsement, boiler explosion and against such other casualties or hazards as may be reasonably required by Beneficiary, including loss of rents or business interruption insurance covering all rents for a period of twelve (12) months, and vandalism and malicious mischief, all in FSC IX or larger companies rated B+ or better by A.M. Best Company in the amount of the full insurable value of the Property on a replacement cost basis (but in any event not less than the amount of the loan) and in form satisfactory to Beneficiary during the existence of the debt hereby secured, and will keep the originals of all such policies of insurance (the "Fire and Extended Coverage Policies") of whatever nature constantly assigned, pledged to Beneficiary and will deliver certified copies of the policy to Beneficiary with a noncontributory mortgage endorsement making losses payable to Beneficiary with the premiums thereon fully paid. The Fire and Extended Coverage Policies are hereby subjected to the lien of this Deed of Trust. All Fire and Extended Coverage Policies shall provide that the coverage evidenced thereby shall not be terminated or modified without thirty (30) days' prior written notice to Beneficiary. Renewals of all Fire and Extended Coverage Policies shall be delivered to Beneficiary at least thirty (30) days prior to the expiration of such policies. For further securing the payment thereof, Trustor hereby confers upon Beneficiary the full right and power to settle and compromise all losses covered by said Fire and Extended Coverage Policies, together with the full right and power to demand, receive and receipt for all monies becoming payable thereunder, the same to apply, at the option of Beneficiary, toward the payment of the Note and any other indebtedness secured hereby or the repair, restoration or rebuilding of the Property without affecting the lien of this Deed of Trust for the full amount secured hereby before such damage or payment to Beneficiary took place; and in the event of foreclosure hereunder, all right, title and interest of Trustor in and to said Fire and Extended Coverage Policies shall, at the option of the purchaser, pass to the purchaser at said foreclosure sale and Trustor shall receive credit in the amount of the short-rate refund. Notwithstanding the foregoing, if no Default shall exist under the Note, this Deed of Trust or any other instrument securing the Note, the insurance proceeds, less the costs and expenses incurred in collecting them (the "Net Insurance Proceeds") shall be applied by Beneficiary to the payment of the cost of restoring the Property; provided, that Beneficiary may instead apply the Net Insurance Proceeds to the obligations secured hereby if (a) the casualty loss occurs within twelve (12) months before the maturity date of the Note; or (b) in the reasonable judgment of Beneficiary, the Property cannot be restored as an economically viable unit, able to provide sufficient income to pay the debt service on the Note and cover operating expenses, within twelve (12) months after the casualty event occurs, or (c) there are insufficient funds deposited from the Net Insurance Proceeds with Beneficiary (or Trustor has not deposited with Beneficiary sufficient additional funds) to complete the cost of the restoration as determined by an architect approved by Beneficiary. If the Net Insurance Proceeds exceed the cost of restoring the Property, said excess may be applied by Beneficiary to the obligations secured hereby. If any insurance proceeds are applied to payment of sums due under the Note, this Deed of Trust or any other instrument securing the Note, no prepayment premium shall be payable.

That it will also carry comprehensive general public liability insurance (the "Liability Insurance") in an amount of not less than \$2,000,000, combined single limit coverage for injury to persons and damage to property, with a deductible limit and in companies, and forms

satisfactory to Beneficiary during the existence of the debt secured hereby and deliver to Beneficiary certificates evidencing the policies of Liability Insurance, certificates evidencing renewals thereof to be delivered to Beneficiary at least thirty (30) days prior to their expiration.

That it will annually during the term of the Note secured hereby and at least thirty (30) days prior to the expiration of the Fire and Extended Coverage Policies and the policies of Liability Insurance, furnish Beneficiary with receipts showing that the premiums for such policies of insurance have been paid in full for the next succeeding year. In the event Trustor shall for any reason fail to keep: (a) such insurance in effect with the premiums fully paid; (b) the Fire and Extended Coverage Policies (including renewals thereof) duly assigned and certified copies of the policies delivered to Beneficiary; and (c) certificates evidencing the policies (including renewals thereof) of Liability Insurance delivered to Beneficiary; all as above provided, Beneficiary may (but shall not be obligated to) effect any such insurance, paying the costs and expenses thereof, and shall be secured for the sums so advanced in accordance with the provisions of Section 1.09 below.

1.06. Monthly Tax and Insurance Deposits. Trustor will, at the option of Beneficiary, at the time of each monthly payment required by the Note, deposit with Beneficiary an amount estimated by Beneficiary to be sufficient to enable Beneficiary to pay at least thirty (30) days before they become due:

- (a) all taxes, assessments and other similar charges against the Property; and
- (b) yearly premiums to keep in force the insurance required by Section 1.05 of this Article I;

all of which funds shall be held by Beneficiary for the benefit of Trustor without any obligation of Beneficiary to pay interest thereon and shall be used and applied by Beneficiary for the purposes and in the manner prescribed in this Section. In paying such items Beneficiary may rely upon any tax bill, notice of assessment or premium notice furnished to Beneficiary without further obligation to inquire into the validity or accuracy of such items. Furthermore, if at least 45 days prior to the due date of taxes Trustor provides to Beneficiary's servicer written notice of Trustor's intent to protest the taxes, Beneficiary's servicer will deliver such notice to the appropriate tax authorities. Upon demand of Beneficiary, Trustor will deliver to Beneficiary such additional monies as are necessary to make up any deficiency in the amount necessary to enable the Beneficiary to pay the foregoing items. In the event of a Default by Trustor in the performance of any of the terms, covenants or conditions contained herein or in the evidence of the debt secured hereby, Beneficiary may apply on the indebtedness secured hereby, in such manner as Beneficiary shall determine, any funds of Trustor then in Beneficiary's possession under this Section. A waiver by Beneficiary of Beneficiary's rights under this Section for any period of time or for Trustor or any of Trustor's successors in title shall not constitute a waiver of the provisions of this Section and Beneficiary may on one or more occasions exercise its rights hereunder unless such waiver by Beneficiary shall be in writing and shall specifically provide that Beneficiary waives all of its rights under this Section for the entire term of this Deed of Trust. To the extent Trustor complies with this Section 1.06 concerning the deposit with Beneficiary of the amounts as hereinabove set forth in this Section, Beneficiary will pay taxes,

assessments and other similar charges against the Property and will pay the annual premiums to keep the required insurance in force as required by Sections 1.04 and 1.05, respectively of this Article, which obligation shall be limited to the amount of funds received by Beneficiary.

1.07. Maintenance of Improvements. Trustor will:

(a) keep the Property in good order and repair, and will not commit or suffer waste thereon, nor remove, raze or demolish any of the improvements located on the Premises without the prior written consent of Beneficiary, nor do or permit to be done any act whereby the Property shall become less valuable;

(b) perform and comply promptly with, and cause the Property to be maintained, used and operated in accordance with, any and all (i) present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency having jurisdiction over Trustor or the Property, including without limitation, all applicable federal, state and local laws pertaining to air and water quality, hazardous materials, hazardous waste, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and rules, regulations and ordinances of the United States Environmental Protection Agency and all other applicable federal, state and local agencies and bureaus; (ii) similarly applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; (iii) similarly applicable duties or obligations of any kind imposed under any covenant, condition, agreement or easement, public or private; and (iv) policies of insurance at any time in force with respect to the Property. If Trustor receives any notice that Trustor or the Property is in Default under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Trustor will promptly furnish a copy of such notice to Beneficiary; and

(c) maintain and keep in full force and effect all licenses, permits and consents necessary or required by any such governmental authority or agency.

Trustor hereby represents and warrants except as noted in that certain Phase I Environmental Report dated April 13, 2021 from Intermountain Environmental Consultants, Inc., Environmental report from Wasatch Environmental dated June 16, 2021, and Environmental report from Wasatch Environmental dated July 23, 2021, that neither Trustor nor, to the best of Trustor's knowledge, any other person or entity used, generated, stored or disposed of, on, under or about the Property any hazardous waste, toxic substances or related materials in violation of applicable environmental laws, (hereafter referred to as "Hazardous Materials"). For the purposes of this Deed of Trust, Hazardous Materials shall include, but shall not be limited to, any substance, material or waste, which is or becomes regulated by any State or local government authority or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.101) or which is included within the definition of a "hazardous substance", as that term is defined under the Comprehensive Environmental Response Compensation and Liability Act [42 U.S.C. § 9601(14)], as the same

may be amended from time to time. Notwithstanding the foregoing to the contrary, Trustor and its tenants may use products on the Property which are incidental to Trustor's use and operation of the Property, such as cleaning supplies, photocopy supplies, secretarial supplies, and chemicals which are categorized as Hazardous Substances ("De Minimis Amounts"); provided that such materials are used, stored and disposed of in compliance with all Environmental Laws. Further, Trustor agrees that it will not permit the storage of any toxic materials or Hazardous Materials in, on or around the Property now or at any future time in violation of applicable environmental laws and will indemnify and hold Beneficiary harmless from and against any loss, liability, cost, expense or action(s) which may result in connection with Hazardous Materials, including De Minimis Amounts, or toxic materials as they relate to the Property including without limitation asbestos and lead based paint.

If at any time it is determined that there are any toxic materials or Hazardous Materials located on the Property, Trustor shall diligently commence and continue to take such action, at its sole expense, as is necessary to comply with all environmental and safety requirements pertaining to the generation, transportation, use and disposal of such materials. Failure of Trustor to comply with all environmental and safety requirements of federal, state or local laws, statutes, ordinances or regulations, rules, court or administrative orders or decrees, or private agreements, shall constitute and be a Default under this Deed of Trust and Beneficiary, in lieu of foreclosure, shall have the option to require specific performance of Trustor's obligations hereunder. Trustor agrees to enter into a side letter agreement detailing the terms of an escrow agreement with the Title Company to set aside funds for the remediation of certain hazardous Materials on or in the Mortgaged Property. Any default in such side letter agreement will constitute a default under section 2.01 of this Deed of Trust.

Trustor hereby acknowledges and agrees that Beneficiary has not participated, and shall not participate, in the management of Trustor and that any indicia of ownership which Beneficiary may have in and to the Property by virtue of this Deed of Trust (and the rights granted to Beneficiary herein) is primarily to protect Beneficiary's security interest and lien in and to the Property.

If Trustor shall fail to comply with this Section, Beneficiary may effect any needed repairs or alterations, maintain utility services and obtain security protection for the Property if the same is abandoned or vacant, obtain necessary licenses, permits and consents and take any other action Beneficiary deems necessary to cause the Property to be in full compliance with this Section. In each such instance, Beneficiary may (but shall not be obligated to) pay the costs and expenses thereof and shall be secured hereby for the sums so advanced in accordance with the provisions of Section 1.09 below.

1.08 Protection of Property and Rights. Beneficiary shall have the right and power to institute and maintain or defend or intervene in such suits and proceedings as it may deem expedient to:

- (a) prevent any impairment of the Property by any acts which may be unlawful or constitute any violation of this Deed of Trust;



(b) enforce, defend, preserve or protect its interest (including the priority of the lien created hereby) in and to the Property and the income, royalties, revenue, rents, profits and other benefits arising therefrom and its rights and remedies under this Deed of Trust;

(c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Beneficiary; and

(d) defend, preserve or protect its interests should Beneficiary become a party to any suit or proceeding by reason of this Deed of Trust.

All of Beneficiary's costs and expenses (including attorney's fees to the extent permitted by law) incurred in any such actions shall be secured hereby and be paid by Trustor on demand as provided in Section 1.09 of this Article.

1.09. Advances Secured. If Trustor shall fail to perform its obligations under Sections 1.04, 1.05 or 1.07 of this Article and if Beneficiary shall advance its funds for the purposes specified in such sections or if Beneficiary shall advance sums for or in connection with any suit or proceeding referred in Section 1.08 of this Article, then the sums so advanced by Beneficiary, together with the costs and expenses of effecting the same, shall be payable on demand with interest from the date of payment. All sums advanced by Beneficiary under the provisions of Sections 1.04, 1.05, 1.07 and 1.08 of this Article and the costs and expenses thereof with interest from the date of the advance at the Default Rate as provided in the Note secured hereby shall be added to and become a part of the indebtedness of Trustor until paid and the repayment thereof shall be secured by this Deed of Trust with the same priority and in the same manner as the indebtedness evidenced by the Note secured hereby.

1.10. Damage to Property. If all or any part of the Property shall be damaged by fire or other casualty, Trustor will promptly restore the Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, if Beneficiary, pursuant to Section 1.05 of this Article, shall elect to apply the insurance proceeds to the payment of the Note and any other indebtedness secured hereby, Trustor shall not be obligated to restore the Property. If a part of the Property shall be physically damaged through condemnation, the Trustor will promptly restore, repair or alter the remaining property in a manner satisfactory to Beneficiary, provided Beneficiary permits Trustor to use any condemnation awards for such purpose.

1.11. Inspections. Beneficiary is hereby authorized to enter upon and inspect the Property at any time during normal business hours during the life of this Deed of Trust and for such purposes is hereby granted an easement to enter upon and inspect the Property.

1.12. Financial Statements. Annually during the term of the loan secured hereby, Trustor, at its expense, shall furnish to Beneficiary, within four (4) months after the end of each fiscal year of Trustor, (i) annual financial statements of Trustor and any guarantors of Trustor,

and (ii) detailed financial statements of the income and expenses occasioned by the operation of the Property (collectively, the "Financial Statements"), all in detail and scope satisfactory to Beneficiary in accordance with normal accounting practice and either prepared by a certified public accountant or certified as to completeness and correctness by the Managing Member of Trustor. In the event of a Default in this Deed of Trust, the Note secured hereby or any other instrument securing the Note, Beneficiary shall have the right to require that the Financial Statements be certified by an independent certified public accountant acceptable to Beneficiary. Contemporaneously with the delivery of the Financial Statements, Trustor shall also furnish to Beneficiary a current rent roll specifying the names of tenants, the space occupied, the amount of the security deposit, the rate of rent for the leased space, any capital expenditures during the previous twelve (12) months, an explanation of expense treatment, and the expiration date of each lease. Beneficiary shall have the right to conduct (at its expense) its own independent audit of Trustor's income and expenses relating to the Property.

1.13. Replacements - Alterations. None of the improvements, fixtures, apparatus, equipment and personal property, except personal property and trade fixtures owned by tenant, now or hereafter owned or leased by Trustor and now or hereafter attached to or located upon and used or furnished in connection with the operation or letting of the Property or any part thereof shall be removed unless replaced with similar property of equal or greater value and no building or other improvements now or hereafter on the Premises shall be materially structurally altered without the prior written consent of Beneficiary.

1.14. Demolition - Eminent Domain. Upon the actual or threatened waste, demolition or removal of any of the improvements now or hereafter on the Premises or the condemnation or other taking (including, without limiting the generality of the foregoing, changes of grades of streets or roads) under the power of eminent domain of all or any part of the Property or upon any other damage or injury to or any decrease in the value of the Property caused by such condemnation or through the power of eminent domain (hereinafter individually and collectively referred to as the "Taking"), the entire indebtedness secured hereby shall, at the option of Beneficiary, without notice, become immediately due and payable. Trustor hereby assigns to Beneficiary as additional security for the debt secured hereby, all awards in any and all such proceedings, including all awards or payments for injury or damage to or decrease in the value of the Property, which may, at the option of Beneficiary, be applied on the indebtedness hereby secured after first deducting the costs and expenses of Beneficiary (including attorneys' fees to the extent now or hereafter permitted by law) incurred in such proceedings and any balance of such monies then remaining shall be paid to Trustor. Trustor will give notice of any such proceedings or event to Beneficiary and Beneficiary may intervene therein for the protection of its interest in the Property. Trustor will execute and deliver to Beneficiary from time to time such further instruments as may be requested by Beneficiary to confirm such assignment to Beneficiary of any such award or payment. Notwithstanding the foregoing, if no Default shall exist under the Note, this Deed of Trust or any other instrument securing the Note, such award or payment, less the costs and expenses incurred in collecting them (the "Net Proceeds"), shall be applied by Beneficiary to the payment of the cost of restoring the Property; provided, that Beneficiary may instead apply the Net Proceeds to the obligations secured hereby if (a) the Taking occurs within twelve (12) months before the maturity date of the Note; or (b) in the reasonable judgment of Beneficiary, the Property cannot be restored as an economically viable

unit, able to provide sufficient income to pay the debt service on the Note and cover operating expenses, within twelve (12) months after the Taking occurs. If the net proceeds exceed the cost of restoring the Property, said excess may be applied by Beneficiary to the obligations secured hereby. If any award or payment is applied to payment of sums due under the Note, this Deed of Trust or any other instrument securing the Note, no prepayment premium shall be payable.

1.15. Rent Assignment. As additional security for the payment and performance of all of the Secured Obligations, Trustor assigns and pledges to Beneficiary during the continuation of this Trust Deed, all income, rents, royalties and profits and rental value of the Property and any and all present or future leases and rental and occupancy agreements for the payment of the indebtedness secured hereby; provided, however, until Default or Defaults in any of the terms, covenants and conditions of this Deed of Trust or of the Note secured hereby, Trustor shall be suffered and permitted to use and enjoy the Property and to receive when due, but not more than two (2) months in advance except upon written approval of Beneficiary, the income, rents, royalties and profits and rental value thereof.

In the event and during the continuance of any Default or Defaults, Beneficiary at its option without notice shall have full power and authority to do and perform any one or more of the following, to-wit:

- (a) to take possession of the Property and to operate and maintain the same with full power and authority to lease the whole or any part thereof and to collect the income, rents and profits therefrom;
- (b) to institute and carry on all actions and proceedings deemed necessary for the recovery of possession or the protection of all or any portion of the Property and to institute and prosecute all actions and proceedings for the collection of income, rents and rental value then due and unpaid and thereafter to become due;
- (c) to make repairs, improvements, alterations or additions deemed necessary;
- (d) to pay the costs and expenses (including, to the extent not prohibited by law, attorneys' fees if one be employed) of any or all of the foregoing out of the income, rents and profits received and to apply the balance toward the cost of discharging the obligations imposed upon Trustor by this Deed of Trust and the Note secured hereby; and
- (e) Beneficiary shall in addition be entitled to have a receiver appointed by a court of proper jurisdiction to perform any and all of the functions specified in subparagraphs (a), (b), (c) and (d) above.

The foregoing powers and authorities contained in subparagraphs (a) to (e), inclusive, shall be operative whether or not foreclosure proceedings have been initiated and shall remain in effect after sale and during redemption periods, if any. Upon or after Default or Defaults in any of the terms, covenants or conditions of this Deed of Trust or the Note secured hereby or any other instrument securing the Note, Beneficiary in addition to the foregoing, at its option and without notice, shall have full right, power and authority to enter upon the Property and to collect the

income, rents and profits hereby assigned with or without taking the actual possession of the Property or any equivalent action. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, directly or indirectly, any of these amounts shall be, or be construed to be, an affirmative by Beneficiary of any tenancy, lease or option, nor an assumption of liabilities under, nor a subordination of lien or charge on this Deed of Trust to any such tenancy lease and option.

1.16. Leases Affecting Property. Trustor will comply with and observe its obligations as landlord under all leases affecting all or any part of the Property. Trustor will furnish Beneficiary with a copy of the leases (including all amendments, modifications, supplements, addenda, and additions thereof or thereto) demising all or any part of the Property. Except when done in the ordinary course of business when Trustor is otherwise not in default, Trustor will not without the prior written consent of Beneficiary change the form of the lease, reduce the amount of rent due under, extend the term of, accept surrender of or terminate, either orally or in writing, all other leases or tenancies now or hereafter existing upon the Property nor will Trustor waive performance of the obligations of the tenants thereunder nor permit an assignment or sublease unless the same shall be expressly permitted by the terms of the lease. Trustor will not accept payment of rent for more than two (2) months in advance without the prior written consent of Beneficiary. If requested by Beneficiary, Trustor will separately assign to Beneficiary, as additional security, any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Property from time to time accruing.

At the request of Beneficiary, Trustor will enter into appropriate agreements which will effect the subordination of this Deed of Trust to any present or future leases of all or any part of the Property.

1.17. No Further Assignments of Leases - Rents. Trustor will make no assignment of leases, income, rents, profits or rental value of the Property for any present or future debts or obligations other than those secured by this Deed of Trust.

1.18. Maximum Interest. No provision of this Deed of Trust, the Note or any other instrument securing the Note shall require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein, in the Note or in such other instrument provided for, or shall be adjudicated to be so provided for herein, in the Note, or in such other instrument, neither Trustor nor its successors or assigns shall be obligated to pay such interest in excess of the maximum amount permitted by law and the right to demand the payment of any such excess shall be and hereby is waived. This provision shall control any other provision of the Note, this Deed of Trust or such other instrument. If any such excess interest shall have been paid by Trustor it shall automatically be treated as a permitted additional prepayment of principal, but no premium for such payment shall be charged to Trustor.

1.19. Appointment of Successor Trustees. Beneficiary is hereby granted full power at any time and from time to time to appoint a successor Trustee by instrument properly executed, acknowledged and filed for record in the office of the Recorder of Deeds in and for the county

wherein this instrument is recorded, for any reason satisfactory to itself, who, from and after the filing of such appointment, shall have and possess all of the powers, authorities, duties and obligations vested in and upon the Trustee designated in this instrument. The power given hereby shall not be exhausted by the exercise thereof on one or more occasions.

1.20. Security Agreement. This Deed of Trust shall be a security agreement between Trustor, as debtor, and Beneficiary, as secured party, encumbering that portion of the Property (such portion being hereinafter called the "Collateral"), including without limitation, all personal property and the rents, issues and profits of the Property, including but not limited to all goods, building and other materials, supplies, inventory, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software included therein and supporting information, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use Property; together with all rents and security deposits derived from the Property; all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, proceeds of the sale of promissory notes, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing, operation, sale or disposition of the Property or any business now or hereafter conducted thereon by Trustor; all development rights and credits, and any and all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with the Property, whether decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing which may be governed by Article 9 of the Utah Uniform Commercial Code (hereinafter referred to as the "Code"). As further security for the payment and performance of this Note, Trustor hereby grants to Beneficiary a security interest in the Collateral, and this Deed of Trust shall also be a security agreement between Trustor, as debtor, and Beneficiary, as secured party, encumbering the Collateral. In addition to the other rights, remedies, privileges and powers of Beneficiary hereunder, Beneficiary shall have all of the rights, remedies, privileges and powers of a secured party under the Code. Trustor shall execute and deliver on demand, and hereby irrevocably constitutes and appoints Beneficiary the attorney-in fact of Trustor to execute, deliver and, if appropriate, file with the appropriate filing office or offices, all security agreements, financing statements, amendments to financing statements and other instruments as Beneficiary may request or require to establish and maintain the validity, perfection and priority of Beneficiary's

respective security interests in the Collateral, and Trustor shall bear all costs thereof, including all Code searches reasonably requested or required by Beneficiary. As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Code.

Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney in fact (such agency being coupled with an interest), and as such attorney in fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney in fact shall be accountable only for such funds as are actually received by Beneficiary.

1.21. Transfer or Further Encumbrance of Property. That it will not sell, assign, transfer, convey or otherwise alienate or further mortgage or encumber the Property or any part thereof or interest therein, or any interest in the entity owning the Property, whether legal or equitable, and whether voluntary or involuntary or by operation of law, without, in each such instance, the prior written consent and in the sole discretion of Beneficiary. Beneficiary may withhold its consent for any reason, and may elect to declare the Note secured hereby in Default and the principal remaining unpaid, together with interest thereon and premium, if any, and any other sums due under any instrument given to secure the Note, at once due, payable and collectible and exercise any and all rights and remedies granted or given to Beneficiary by this Deed of Trust or any other instrument securing the Note upon the occurrence of a Default by Trustor hereunder or under such other instruments, notice of such election being expressly waived. Notwithstanding the foregoing, any interest of members of Trustor in Trustor, or interest of Trustor in the Property may be transferred among members of Trustor who were members at the time of the execution of this Deed of Trust, among family members of members of Trustor, or for estate planning purposes or through testate or intestate succession provided notice of such transfer is provided to the Beneficiary. Guarantors, if any, shall not be released from personal liability, including carve-outs and environmental indemnification.

1.22. Use of Property. Trustor shall operate the Property at all times as a shopping center, and will not acquire any fixtures, equipment, appliances, furniture, furnishings or apparatus covered by this Deed of Trust subject to any security interest or other charges or liens taking precedence over or ranking on a parity with this Deed of Trust.

## ARTICLE II DEFAULTS

Trustor covenants and agrees as follows:

2.01. Defaults. The term "Default" as used throughout this Deed of Trust, the Note and any other Instruments securing the Note shall be defined as provided in this section.

If any one or more of the following defaults shall occur:

(a) If default shall be made in the payment of principal, interest or premium, if any, on the Note, when and as the same shall become due and payable, or in any other payment on the Note, when and as the same shall become due and payable, whether at maturity, by acceleration or as a part of any prepayment or otherwise, as in the Note or this Deed of Trust provided; or

(b) If default shall be made in the due observance or performance of any covenant or agreement contained in this Deed of Trust and such failure is not cured within thirty (30) days after written notice to Trustor from Beneficiary of such default ("Default Notice"); provided, however, that if such default cannot be cured within said thirty (30) days, Trustor shall not be in default hereunder if it commences the cure within said thirty (30) day period and diligently pursues such cure to completion, and completes such cure within ninety (90) days of the date of the Default Notice; or

(c) If default shall be made in the due observance or performance of any covenant, condition or agreement of Trustor contained in any other instrument securing the Note and such failure is not cured within thirty (30) days after written notice to Trustor from Beneficiary of such default ("Default Notice"); provided, however, that if such default cannot be cured within said thirty (30) days, Trustor shall not be in default hereunder if it commences the cure within said thirty (30) day period and diligently pursues such cure to completion, and completes such cure within ninety (90) days of the date of the Default Notice; or

(d) If a receiver, trustee or liquidator (or other similar official) of Trustor (the term "Trustor" as used in this subparagraph (d) and in subparagraphs "(e)" and "(f)" below shall also include any other party or entity which shall be liable for the payment of the Note, whether as co-maker, guarantor, endorser, accommodation party or otherwise) or of the Property or any portion thereof, shall be appointed in any proceeding or by any federal or state officer or agency and shall not be discharged within 60 days after such appointment or if the Trustor shall consent to such appointment; or

(e) If the Trustor shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Code or any similar federal or state law, now or hereafter in effect, or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or shall be dissolved, or shall suspend payment of its obligations or shall take any action in furtherance of any of the foregoing; or if a petition or an answer shall be filed proposing the adjudication of the Trustor as a bankrupt or its

reorganization or for arrangement under the Bankruptcy Code or any similar federal or state law, now or hereafter in effect, and (1) the Trustor shall consent to the filing thereof, or (2) such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or

(f) If final judgment for the payment of money shall be rendered against Trustor and Trustor shall not discharge the same or provide for its discharge in accordance with its terms or procure a stay of execution thereon within said period, or such longer period during which execution on such judgment shall have been stayed, or appeal from such judgment or the order, decree or process upon or pursuant to which such judgment shall have been granted, passed or entered and cause the execution thereof to be stayed during such appeal, and if on appeal such judgment, order, decree or process shall be affirmed and the Trustor shall not discharge such judgment or provide for its discharge in accordance with its terms within sixty (60) days after the entry of the order or decree of affirmance;

then, and in every such case, this Deed of Trust shall stay in force and during the continuance of any such default:

(i) Beneficiary may declare the entire principal of the Note (if not then due and payable), and all accrued and unpaid interest thereon (and premiums, if any) and all other sums secured by this Deed of Trust, to be due and payable immediately, and upon any such declaration the principal of the Note and said accrued and unpaid interest (and premium, if any) and all other sums secured by this Deed of Trust shall become and be immediately due and payable, anything in the Note or in this Deed of Trust to the contrary notwithstanding;

(ii) With or without notice, without releasing Trustor from any Secured Obligation and without becoming a mortgagee in possession, Beneficiary may, but shall not be obligated to cure any default of Trustor and, in connection therewith: (i) to enter upon the Property and to do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security of this Deed of Trust, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Trustee, is senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist them.

(iii) Beneficiary may commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to obtain specific enforcement of the covenants of Trustor under this Deed of Trust, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy. For the purposes of any suit brought under this subsection, Trustor waives the defenses of laches and any applicable statute of limitations.

(iv) Beneficiary may take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Property; to make or modify leases of,



and other agreements with respect to, the Property upon such terms and conditions as Beneficiary deems proper; and to make repairs, alterations and improvements to the Property deemed necessary, in Trustee's or Beneficiary's judgment, to protect or enhance the security hereof.

(v) Beneficiary may elect to cause the Property, or any part thereof, to be sold pursuant to the power of sale granted herein in accordance with the laws of the State of Utah. Upon the request of Beneficiary, the Trustee or successor trustee or trustees appointed as herein provided, may proceed to sell the Property and any and every part thereof at public venue to the highest bidder for cash, first giving such notices and publishing such advertisements, terms and place of sale and of the property to be sold as may be required by law; and upon such sale shall execute and deliver a deed of conveyance to the property sold to the purchaser or purchasers thereof and any statement or recital of fact in such deed shall be prima facie evidence of the proof of such recital; and the Trustee shall receive the proceeds of such sale out of which shall be paid: FIRST, the costs and expenses of executing this trust including the compensation to the Trustee for his services and a reasonable attorney's fee for his attorneys and for the attorneys of Beneficiary, if such attorneys be employed; SECOND, to Beneficiary upon the usual vouchers therefor, all monies, including interest thereon, advanced and paid under and in pursuance of the terms and provisions of this Deed of Trust; THIRD, the Note with interest thereon to the time of such sale, and premium, if any; FOURTH, any subsequent lien; and the balance, if any, shall be paid to Trustor or its legal representative or those entitled thereto under Utah law. The power of sale hereunder shall not be exhausted by any one or more such sales (or attempts to sell) as to all or any portion of the Property remaining unsold, but shall continue unimpaired until all of the Property has been sold or the Note and all indebtedness of Trustor to Beneficiary under this Deed of Trust shall have been paid in full.

(iii) Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including without limitation, costs of structural reports and other due diligence, costs to carry the Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Property; (iv) declining trends in real property values generally and with respect to properties similar to the Property; (v) anticipated discounts upon resale of the Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Beneficiary deems appropriate. Trustor acknowledges and agrees that: (a) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (b) this

Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; and (c) Beneficiary's credit bid may be, at Beneficiary's sole discretion, higher or lower than any appraised value of the Property.

(iv) Beneficiary shall continue to have the optional rights to exercise any or all other powers, rights and remedies given Beneficiary by this Deed of Trust, including, and not by way of limitation, the right to pay taxes, assessments, insurance and the cost of repairs and the like given to it by Sections 1.04, 1.05, 1.07 and 1.08 of Article I above and the repayment of all such funds with interest thereon as hereinabove provided shall be secured by this Deed of Trust;

(v) Trustee may exercise any or all of the remedies of a secured party available to it under the Code with respect to the Collateral, including, but not limited to, a sale or other disposition of any part thereof in any manner now or hereafter permitted by the Code or in accordance with any other remedy provided by applicable law. Any such sale or disposition may be either public or private as Beneficiary may elect subject to the provisions of the Code. Expenses of retaking, holding, preparing for sale, selling or the like shall include Beneficiary's and Trustee's reasonable attorney's fees and legal expenses. Upon demand of either Beneficiary or Trustee, Trustor shall assemble the Collateral and make it available to Beneficiary, as the case may be, at the Property, which Trustor and Trustee agree is a place which is deemed reasonably convenient to them. It is expressly agreed that if, upon the occurrence of an Event of Default, Trustee should proceed to dispose of the Collateral in accordance with the provisions of the Code, ten (10) days notice by Beneficiary to Trustor shall be deemed to be reasonable notice under any provision of the Code requiring such notice. Trustee, at the request and direction of Beneficiary, may dispose of the Collateral in accordance with the Trustee's rights and remedies in respect of the real property pursuant to the provisions of this Deed of Trust in lieu of proceeding under the Code.

(vi) Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to the Collateral, including, but not limited to, a sale or other disposition of any part thereof in any manner now or hereafter permitted by the Code or in accordance with any other remedy provided by applicable law. Any such sale or disposition may be either public or private as Beneficiary may elect subject to the provisions of the Code. Expenses of retaking, holding, preparing for sale, selling or the like shall include Beneficiary's reasonable attorney's fees and legal expenses. Upon demand of Beneficiary, Trustor shall assemble the Collateral and make it available to Beneficiary, as the case may be, at the Property, which Trustor and Beneficiary agree is a place which is deemed reasonably convenient to them. It is expressly agreed that if, upon the occurrence of an Event of Default, Beneficiary should proceed to dispose of the Collateral in accordance with the provisions of the Code, ten (10) days notice by Beneficiary to Trustor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; and

(vii) Beneficiary may apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to:

(i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Trustor consents to such appointment.

No remedy granted or conferred by this Deed of Trust is intended to be exclusive of any other remedy or remedies and each and every remedy shall be cumulative and shall be in addition to every remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Beneficiary to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein and every right, power and remedy given by this Deed of Trust or now or hereafter existing at law or in equity or by statute may be exercised from time to time and as often as may be deemed expedient by the Beneficiary.

### ARTICLE III MISCELLANEOUS

Trustor covenants and agrees as follows:

3.01. No Waiver of Provisions. No failure by Beneficiary to insist upon the strict performance of any covenant, agreement, term or condition of this Deed of Trust or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial payment on the Note during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Deed of Trust to be performed or complied with by Trustor, and no breach thereof, shall be waived, altered or modified except by an instrument executed by Beneficiary. No waiver of any breach shall affect or alter this Deed of Trust, but each and every covenant, agreement, term and condition of this Deed of Trust shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

3.02. Extensions. That any extension of the time for payment of the indebtedness secured hereby, release of security or any modification of the instrument or instruments evidencing the indebtedness secured hereby, granted to any future owner of the Property, shall not relieve Trustor from liability to pay said indebtedness nor release Trustor with respect thereto and Trustor does hereby waive presentment and demand for payment, notice of nonpayment and notice of protest.

3.03. Powers not Exhausted. No right or power given to Beneficiary or the Trustee by this instrument shall be exhausted by the exercise thereof on one or more occasions, but the same shall be a continuing right or power during the entire term of this Deed of Trust and may be exercised from time to time in accordance with the provisions of this instrument.

3.04. Covenants Run with Land. The covenants and agreements hereinabove contained shall run with the land and shall bind and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, but neither this

Section 3.04 nor Section 3.06 of this Article III shall be construed as constituting Beneficiary's consent to any assignment, conveyance or other transfer by Trustor of its interest in the Property.

3.05. Subrogation. Beneficiary before a sale hereunder, and the purchaser at the sale hereunder, shall be subrogated to the lien of any prior encumbrance or vendor's lien, if any, on the Property paid out of the money secured by this Deed of Trust, whether or not such prior lien or encumbrance has been released of record.

3.06. Successors and Assigns, Etc. Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and every mention of the Beneficiary, the Trustee or Trustor shall include the heirs, executors, legal representatives, administrators, successors and assigns of the party so designated. If more than one party or entity is designated as "Trustor" herein, each such party or entity shall be jointly and severally liable for the performance and observance of all the covenants, conditions and agreements of this Deed of Trust to be performed and observed by Trustor. The terms "Deed of Trust" and "Note" shall include all amendments, modifications and supplements thereto.

3.07. Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Deed of Trust or in the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note shall be in no way affected, prejudiced, limited or impaired thereby.

3.08. Notice. All notices, demands and requests given hereunder by Trustor or Beneficiary shall be in writing and shall be by: (a) hand delivery to the address for notices; or (b) delivery by overnight courier service to the address for notices; or (c) by certified mail, return receipt requested, addressed to the address for notices by United States mail, postage prepaid. All notices shall be deemed received upon the earliest to occur of: (i) the hand delivery of such notice to the address for notices; or (ii) one day after the deposit of such notice with any overnight courier service addressed to the address for notices; or (iii) three days after depositing the notice in the United States mail as set forth in (c) above. All notices shall be sent to the address set forth in the initial paragraph hereof or to such other person or at such other place as any party hereto may by notice designate as a place for service of notice.

3.09. Headings. The headings of the subdivisions of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof or the interpretation hereof.

3.10. Governing Law. This Deed of Trust and the Note secured hereby are to be construed and enforced according to and governed by the laws of the State of Utah.

3.11. UTAH STATUTE OF FRAUDS – NOTICE TO TRUSTOR. PURSUANT TO UTAH CODE ANN. §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 AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

3.12. Recourse. Without in any manner releasing, impairing or otherwise affecting the Note, this Deed of Trust or any other of the documents evidencing or securing the Note (collectively " Loan Documents") there shall be no personal liability of Trustor under the Note or under any of the other Loan Documents; provided, however, that Trustor may be named in an action and a judgment may be sought against the Trustor to the extent necessary to enforce the rights of Beneficiary in, to or against the Mortgaged Property, the rents and profits therefrom, and all collateral securing the indebtedness evidenced by the Note or any of the other Loan Documents as long as no such judgment shall be enforced against Trustor, except as hereinafter specifically provided. Notwithstanding any of the foregoing, nothing contained in this section shall be deemed to prejudice the rights of Beneficiary

- (a) to recover from the Trustor all actual loss, damage, cost and expense (including reasonable attorneys' and other professionals' fees and costs, whether incurred in connection with nonjudicial action, prior to trial, at trial or on appeal or review), incurred by Beneficiary under this Deed of Trust or other Loan Documents as a result of:
  - (i) fraud or material misrepresentation by Trustor of any warranties or representations contained in the Loan Documents;
  - (ii) violation of Paragraph 1.07 of this Deed of Trust;
  - (iii) failure of Trustor, prior to appointment of a receiver or delivery of possession of the Mortgaged Property to Beneficiary, whichever first occurs, to deposit, following the Beneficiary's request with Beneficiary the amounts required to be deposited under Section 1.06 of the Deed of Trust, together with interest and penalties as consequence thereof;
  - (iv) physical waste of the Mortgaged Property; and
  - (v) misappropriation or mishandling of security deposits paid with respect to any leases, occupancy or rental agreements relating to the Mortgaged Property;
- (b) to recover from the Trustor all rents, royalties, income, revenues, receipts, issues and profits, if any, from the Mortgaged Property directly or indirectly received by or on behalf of the Trustor from and after a default under any Loan Document until such time as Beneficiary attains possession of the Mortgaged Property, or has a receiver appointed for the Mortgaged Property to the extent not used for the benefit of the Mortgaged Property, including, but not limited to, the payment of taxes or the payment operating expenses at the Mortgaged Property;
- (c) to recover from Trustor any misapplication of any awards and proceeds of insurance policies and other income, receipts or revenues and condemnation awards in respect of the Mortgaged Property; and

- (d) to recover from Trustor all indebtedness and obligations of Trustor under the Environmental Indemnity Agreement of even date herewith;
- (e) to recover from Trustor all attorneys' fees and costs incurred by Beneficiary in enforcing its remedies as a result of any guarantor's default or Trustor's default under the Loan Documents.

Trustor promises to pay to Beneficiary all amounts described in clauses (a), (b), (c), (d), and (e) above on demand by Beneficiary following a default under the Note and agree to be liable for payment of all such sums.

In addition, during the remediation period to address certain environmental matters disclosed in the Environmental report from Wasatch Environmental dated June 16, 2021, and the Environmental report from Wasatch Environmental dated July 23, 2021, the Trustor will be liable for the entire principal balance of the Note, including accrued interest in addition to the matters listed under (a) through (e) above. Such liability will be reduced to just the environmental indemnification and standard carveouts once the Trustor receives a closure notice from the Utah Division of Waste Management and Radiation and provides such closure notice to Beneficiary indicating that the issue has been satisfactorily mitigated and/or remediated and no other state or federal agency has intervened in the remediation process and requires additional remediation. Notwithstanding the foregoing; should there be a default under any terms of the Loan or the Loan Documents or should the debt service coverage ratio drop below 1.5 times, then Guarantors shall be liable for twenty-five percent (25%) of the outstanding Principal balance of the Loan, interest accruing at the Default rate of interest, and any associated costs of collection including attorney's fees, in addition to the standard liability carveouts and environmental indemnification.

The foregoing limitation of liability shall not be deemed to impair or limit in any respect the personal liability of any person or entity in respect of any guaranty or indemnity agreement now or hereafter executed in connection with the loan evidenced by the Note (the "Loan"), nor shall it impair or limit in any respect Beneficiary's rights to recover from any such person or entity under any guaranty or indemnity, any and all amounts due thereunder, and all damages (including special and consequential) , losses, liabilities, costs and expenses arising out of a breach of any of the representations, warranties, covenants or obligations contained in such guaranty and indemnity, or otherwise afforded by law or in equity on account thereof with respect to such persons and entities. Furthermore, nothing contained in this paragraph shall be deemed to release, affect, limit, or impair the indebtedness evidenced by the Note or the security therefor. Beneficiary shall be entitled to enforce its full rights and remedies under any and all of the Loan Documents or otherwise afforded by law or in equity, including any remedy for specific performance, injunctive or other equitable relief, and all such rights and remedies are cumulative and may be exercised successively, independently or concurrently at any time. Furthermore, nothing herein shall be deemed to be a waiver of any right or remedy which Beneficiary may have under the United States Bankruptcy Code, as amended from time to time, to file a claim for the full amount of the indebtedness owing to Beneficiary by the Trustor or to require that all collateral shall continue to secure all of the Loan in accordance with the Loan Documents.

(signature page to follow)

IN WITNESS WHEREOF, Trustor has executed these presents as of the day and year first above written.

**BRIGHTON POINTE PARTNERS LLC,**  
a Utah limited liability company

By: DOE ACTIVITIES LLC,  
a Utah limited liability company  
Its: Managing Member

By: *Senti Sorensen*  
Name: Senti Sorensen  
Its: Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 2 day of August, 2021, by Senti Sorensen, Manager of Doe Activities LLC, Managing Member of Brighton Pointe Partners LLC.



*Cortlund G. Ashton*  
Notary Public

My Commission Expires:  
7/25/23

Residing at:  
DRAPER, UT



## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

Beginning at a point being South 00°08'25" West along the section line 621.00 feet and South 89°55'20" West 391.50 feet from the Northeast corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 00°08'25" East 219.00 feet; thence South 89°51'35" East 22.50 feet; thence North 00°08'25" East 213.00 feet; thence North 89°51'35" West 195.00 feet; thence North 00°08'25" East 155.39 feet to the South line of 7800 South Street; thence South 89°56'20" West along said South line 314.33 feet to the Northeasterly boundary of Southampton No. 2, a Subdivision in the Northeast quarter of said Section 35; thence South 38°52'44" East along said Northeasterly boundary 754.67 feet; thence North 89°56'20" East 11.70 feet to the point of beginning.

#### LESS AND EXCEPTING the following:

Beginning at a point South 00°08'25" West along the section line 621.00 feet and South 89°56'20" West 403.20 feet and North 38°52'44" West 507.15 feet from the Northeast corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 38°52'44" West 247.53 feet to the South line of 7800 South Street; thence North 89°56'20" East along said South line 314.33 feet; thence South 00°08'25" West 114.38 feet; thence South 89°56'20" West 61.22 feet; thence South 51°07'16" West 125.20 feet to the point of beginning.

#### PARCEL 2:

Beginning at a point South 00°08'25" West along the section line 621.00 feet and South 89°56'20" West 403.20 feet and North 38°52'44" West 507.15 feet from the Northeast corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 38°52'44" West 247.53 feet to the South line of 7800 South Street; thence North 89°56'20" East along said South line 314.33 feet; thence South 00°08'25" West 114.38 feet; thence South 89°56'20" West 61.22 feet; thence South 51°07'16" West 125.20 feet to the point of beginning.

#### PARCEL 3:

The non-exclusive easements, appurtenant to Parcel 1 and Parcel 2 described herein, for pedestrian and vehicular access, parking of vehicles, and utilities, as created and described in that certain Development Agreement recorded February 7, 1985 as Entry No. 4048237 in Book 5628, Page 686, and by that certain Amendment of Development Agreement recorded April 27, 1993 as Entry No. 5487130, in Book 6648, Page 425, and re-recorded May 12, 1993 as Entry No. 5501239, in Book 6561, at Page 499, and by that Second Amendment to Development Agreement recorded April 27, 1993 as Entry No. 5487131, in Book 6648, Page 435.

#### PARCEL 4:

The non-exclusive easements, appurtenant to Parcel 1 and Parcel 2 described herein, for pedestrian and vehicular access, and utilities, as created and described in that certain Declaration of Easements recorded February 7, 1985, as Entry No. 4048238, in Book 5628, Page 707.

## **EXHIBIT B**

### **PERMITTED ENCUMBRANCES**

1. General taxes for the year 2021 and thereafter, not yet due and payable.
2. The herein described Land is located within the boundaries of Cottonwood Heights City, South Salt Lake Valley Mosquito Abatement District, Cottonwood Improvement District, Central Utah Water Conservancy District, Cottonwood Heights Parks And Recreation Service Area, Wasatch Waste and Recycle District, and is subject to any and all charges and assessments levied thereunder.
3. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed herein. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
4. Claim, right, title or interest to water or water rights whether or not shown by the Public Records.
5. The herein described Land is located within the boundaries of the Greater Salt Lake Municipal Services District, as disclosed by that certain Certificate of Creation recorded October 16, 2015 as Entry No. 12152166 in Book 10370 at Page 7834, and is subject to any and all charges and assessments levied thereunder.
6. Pole Line Easement in favor of Whitmore Oxygen Company, a corporation, its successors in interest and assigns for the erection and continued maintenance, repair, alteration, and replacement of the electric transmission, distribution and telephone circuits and incidental purposes, by instrument recorded August 8, 1950, as Entry No. 1210959, in Book 787, at Page 611.

Assignment of Easements in favor of PacifiCorp, an Oregon corporation, doing business as Rocky Mountain Power, recorded June 29, 2012 as Entry No. 11420017 in Book 10031 at Page 210.

7. Development Agreement by and between Boyer 7800 South Associates, a Utah Limited Partnership and Smith's Food King Properties, Inc., a Utah corporation, dated January 31, 1985 and recorded February 7, 1985 as Entry No. 4048237 in Book 5628 at Page 686.  
  
Estoppel Certificate and Acknowledgment of Priority, dated September 18, 1985 and recorded September 19, 1985 as Entry No. 4139608 in Book 5692 at Page 1002.  
  
Amendment of Development Agreement, dated August 12, 1992 and recorded April 27, 1993 as Entry No. 5487130 in Book 6648 at Page 425.  
  
Re-recorded May 12, 1993 as Entry No. 5501239 in Book 6661 at Page 499.  
  
Second Amendment to Development Agreement, dated August 18, 1992 and recorded April 27, 1993 as Entry No. 5487131 in Book 6648 at Page 435.
8. Declaration of Easements by and between Boyer 7800 South Associates, a Utah limited partnership and Smith's Food King Properties, a Utah corporation, dated February 1, 1985 and recorded February 7, 1985 as Entry No. 4048238 in Book 5628 at Page 707.
9. Right of Way Easement in favor of the Mountain States Telephone and Telegraph Company, to construct, operate, maintain and remove communication equipment and other facilities and incidental purposes, from time to time, upon, over, under and across a portion of the subject Land, recorded September 9, 1985, as Entry No. 4134258, in Book 5688, at Page 2161.
10. Right of Way and Easement Grant, in favor of Mountain Fuel Supply Company, to lay, maintain, operate, repair, inspect, protect, remove and replace pipe lines, valves, valve boxes, and other gas transmission and distribution facilities and incidental purposes, through and across a portion of the subject Land. Said Right of Way and Easement Grant recorded October 2, 1985, as Entry No. 4145186, in Book 5696, at Page 886.
11. Rights of tenants, as tenants only, pursuant to unrecorded leases without right of first refusal or option to purchase.
12. Subject to the following matters disclosed on that certain survey prepared by Peterson Engineering, P.C. having been certified under the date of April 19, 2021, as Job No. A-21-023, by David D Peterson, a Professional Land Surveyor holding License No. 295720:

a. Existing utilities, including but not limited to electric meter(s), electric box(s), gas meter(s), sanitary sewer(s), storm inlet(s), bollard(s), water meter(s), sight light(s), fire hydrant(s), sign(s), power pole(s), cable box(s), storm manhole(s), located on and across the land without recorded easements