

155272-ETF

This document prepared by;

After recording return to:

Scalley Reading Bates Hansen & Rasmussen, P.C.

15 West South Temple, Suite 600

Salt Lake City, Utah 84101

Attn: W. Jeffery Fillmore

Parcel ID No.: 16-04-400-013

13951002 B: 11338 P: 3917 Total Pages: 40

05/12/2022 11:51 AM By: asteffensen Fees: \$40.00

Rashelle Hobbs, Recorder, Salt Lake County, Utah

Return To: CSC ERECORDING

919 N 1000 WLOGAN, UT 84321



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

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING SECURES A LOAN FROM BENEFICIARY TO TRUSTOR UNDER A CONSTRUCTION LOAN AGREEMENT, PROMISSORY NOTE, AND RELATED LOAN DOCUMENTS, AND ALL RENEWALS, EXTENSIONS, MODIFICATIONS, AND REPLACEMENTS THEREOF.

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

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT, AND FIXTURE FILING ("**Deed of Trust**") is made as of May 12, 2022, by and among:

**Trustor:** IVORY UNIVERSITY HOUSE, L3C  
978 Woodoak Lane  
Salt Lake City, Utah 84117  
Attn: CLARK D. IVORY

**Trustee:** COTTONWOOD TITLE INSURANCE AGENCY, INC.  
1996 East 6400 South, Suite 120  
Salt Lake City, Utah 84121

**Beneficiary:** WASHINGTON FEDERAL BANK,  
a Washington state chartered commercial bank  
405 S. Main Street, Suite 100  
Salt Lake City, Utah 84111  
Attn: Brian Jeppesen

Capitalized terms used in this Deed of Trust without definition have the meanings given to them in the Loan Agreement referred to below.

## 1. GRANT AND SECURED OBLIGATIONS.

1.1 **Grant.** 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, all estate, right, title and interest in the leasehold estate and interest that Trustor, as Tenant, now has or may later acquire by, in and under that certain Lease Agreement dated September \_\_\_\_, 2021, and Amendment to Ground Lease Agreement dated May \_\_\_\_, 2022, between The Church of Jesus Christ of Latter-day Saints, as Landlord and Trustor (collectively, the "**Ground Lease**") which Ground Lease relates to all or any part of the following property (but which security interest is limited solely to Trustor's interest in the Ground Lease and in no way grants Beneficiary an interest in any portion of the Landlord's real property (the "**Property**")):

1.1.1 The real property is 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 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 absolute 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 from the Project in which Trustor is the lessor (collectively, the "**Leases**");

1.1.5 All real property and improvements on such real property, 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 Trustor's 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 Beneficiary), 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 to Trustor 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 Trustor's beneficial interests in and rights to proceeds from 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 Beneficiary 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, 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 Trustor's 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"**);

1.1.18 All Trustor's products, profits, rents, proceeds of, additions and accretions to, substitutions, and replacements for, and changes in any of the property described above; and

1.1.19 All Trustor's personal property listed in EXHIBIT B attached hereto.

## 1.2 Secured Obligations.

1.2.1 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 Beneficiary may choose:

1.2.1.1 Payment of all obligations at any time owing under a promissory note (the **"Note"**) of even date herewith, payable by Trustor, as maker, in the stated principal amount of Eighty-One Million Five Hundred Thousand Dollars (\$81,500,000.00) to the order of Beneficiary;

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 Beneficiary, as "Lender" (the **"Loan Agreement"**) and each other document executed for or in connection with the Loan Agreement (collectively, the **"Loan Documents"**);

**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 leasehold estate relating to the Property under the Ground Lease may agree to pay and/or perform for the benefit of Beneficiary, 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 leasehold estate and interest in the Property under the Ground Lease 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 Note 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 irrevocably, absolutely, presently, and unconditionally transfers, assigns, and conveys to Beneficiary all of the right, title and interest of Trustor in and to (a) any and all Leases; and (b) all rents, 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 Grant of License.** Beneficiary hereby confers upon Trustor a license (the "**License**") to retain possession of the Leases and 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, the License shall automatically terminate without notice to Trustor, and without prejudice to Beneficiary. Beneficiary may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Beneficiary and Trustor agree that the mere recordation of this Deed of Trust entitles Beneficiary 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 License granted to Trustor above, Beneficiary has the right, power, and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney-in-fact, coupled with an interest, to, at such times as Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary, 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 Beneficiary shall be applied to the Secured Obligations in such order as Beneficiary 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 Beneficiary 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 Beneficiary, and Trustor shall, within one (1) Business Day after receipt of any Rents, pay the same to Beneficiary to be applied by Beneficiary as set forth below for the "Application of Rents and Other Sums."

**2.4.3 Possession of Property Not Required.** Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property. In Beneficiary's sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary 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.** Beneficiary shall apply all Rents collected by it in the manner provided below for the "Application of Rents and Other Sums."

**2.5 Beneficiary Not Responsible.** Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. If at any time Beneficiary exercises its rights under this Deed of Trust and takes control or possession of its security interests under the Loan Document, Beneficiary shall, pursuant to the terms of the Lease, 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 Beneficiary's failure to lease the Premises or Improvements or from any other act or omission of Beneficiary 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 Beneficiary.** At any time, Beneficiary 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 Beneficiary upon receipt of demand from Beneficiary to so pay the same, and Trustor hereby agrees that each such present and future Tenant may rely upon such written demand from Beneficiary 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 Beneficiary 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 Beneficiary, 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 and the Ground Lease.

**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 Beneficiary'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 Beneficiary'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 Beneficiary may incur in connection with Beneficiary's appearance, voluntary or otherwise, in any such action or proceeding, together with interest thereon at the Default Rate from the date incurred by Beneficiary 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. Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary'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 Beneficiary, except for service contracts entered into in the ordinary course of business.

**3.2.5** Upon Beneficiary's request following an Event of Default, Trustor shall deliver to Beneficiary 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 Beneficiary'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 Beneficiary's judgment to carry out the purposes of this assignment of Contracts, including any consents to this assignment of Contracts.

**3.3 Beneficiary's Remedies upon Default.** Upon the occurrence of an Event of Default, Beneficiary, 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 Beneficiary 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 Beneficiary; (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 Beneficiary, with such third parties as Beneficiary may in its discretion select, and upon such terms and conditions as Beneficiary 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 Beneficiary 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 Beneficiary.** Beneficiary shall not 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 Beneficiary to assume any obligations under any Contract, unless and until Beneficiary becomes 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 Beneficiary, upon Beneficiary'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 Beneficiary for the payment to Beneficiary 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 Beneficiary with respect to the Contracts may be applied, in whatever order



Beneficiary 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 Trustor's leasehold estate and interest in, by, and under the Ground Lease of the Property, an absolute assignment of the Leases and Rents, and a security assignment of Contracts, all in favor of Beneficiary. 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 Beneficiary, as secured party, 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 Article 9 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 Beneficiary, 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 Article 9 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 Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9a-509 of the Utah Uniform Commercial Code. Trustor agrees to furnish any such information to Beneficiary promptly upon Beneficiary's request.

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

**4.2.3** Trustor shall cooperate with Beneficiary in any way necessary to perfect and continue the perfection of Beneficiary'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 Beneficiary's security interest without Beneficiary'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 Beneficiary's security interest at Beneficiary'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 Article 9 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 Beneficiary 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 Beneficiary: (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 Beneficiary's financing statement(s) against all or any portion of the Property without further action by Beneficiary; 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 Beneficiary, at the Project or such other locations as have been disclosed in writing to Beneficiary, and Trustor shall not remove the personal property from such locations without providing written notice to Beneficiary 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 Beneficiary'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, Beneficiary 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, the Utah Community Association Act, or any other law later enacted or effective related to condominiums or common interest ownership communities, without Beneficiary's prior written consent and any attempt by Trustor to do so shall be null and void and at Beneficiary'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 a leasehold estate and interest in the Premises and Improvements by, in, and under the Ground Lease, subject only to the Permitted Encumbrances;

**6.1.2** Trustor has or will have good leasehold estate and interest title to the Property and the Project, free and clear of any security agreements, reservations of title, or conditional sales contracts, and there is no financing statement affecting such title 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 Beneficiary, including all amendments, modifications, exhibits and addenda thereto;

**6.1.4** Under the Ground Lease, Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Leases, Rents, and Contracts as provided in this Deed of Trust, 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 Beneficiary 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 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 Beneficiary 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 Beneficiary'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.

**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 Beneficiary. Trustor hereby authorizes Beneficiary as Trustor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Beneficiary shall have no obligation to do so. Beneficiary 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 Note shall be without imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof, or

**6.5.1.2** The reimbursement of Trustor, under Beneficiary's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Beneficiary may, at its option, condition the reimbursement on Beneficiary'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 Beneficiary may reasonably require.

**6.5.2 Repair or Replacement.** Notwithstanding Section 6.5.1 above, Beneficiary 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 Beneficiary and Beneficiary 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) Beneficiary shall have reviewed and approved the construction contract for the repair and restoration, and if required by Beneficiary, Beneficiary shall have received payment and performance bonds with dual obligee rider; (iii) Beneficiary 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, Beneficiary shall have received from Trustor the amount of the deficiency for disbursement with the insurance proceeds; (iv) Beneficiary 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 Beneficiary and Beneficiary 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 Beneficiary's judgment, the rebuilding and restoration work can be completed at least five (5) months prior to the maturity date of the Note, as such date may be extended; and (vii) Beneficiary must be satisfied that the leases of the Property will remain in full force and effect pending the completion of the repairs, or Beneficiary 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 Beneficiary's then standard procedures for disbursement of construction loan proceeds.

**6.5.2.4** Trustor shall execute and deliver to Beneficiary such additional security documents and instruments as Beneficiary deems reasonably necessary to continue and perfect Beneficiary's security interest in the Property.

**6.5.3 Condemnation.** Trustor shall promptly notify Beneficiary 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 Beneficiary in writing. Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary'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 Beneficiary, and all proceeds of any such awards, payments, damages, or claims shall be paid to Beneficiary. Beneficiary 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, the Improvements, 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 Beneficiary'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 Beneficiary, 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 Beneficiary or Trustee, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Beneficiary.

**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 Beneficiary, deliver to Beneficiary a written statement certifying any condition or state of facts in connection with the Project Licenses that is reasonably requested by Beneficiary;

**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 Beneficiary 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, Beneficiary 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 Beneficiary; and

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

**6.9 Protection of Beneficiary'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 leasehold estate and interest of the Ground Lease, the Property or title thereto or the interest of Beneficiary or the Trustor therein, including eminent domain, insolvency, enforcement of local Laws, or arrangements or proceedings involving a debtor in bankruptcy or a decedent, then Beneficiary, at Beneficiary'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 Beneficiary deems necessary, in its sole discretion to protect Beneficiary'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 Beneficiary 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 Beneficiary's reasonable judgment, may be senior in priority to this Deed of Trust, such judgment of Beneficiary 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 Beneficiary; and/or (g) such other actions reasonably necessary to protect Beneficiary's security.

**6.9.2** Unless and until Beneficiary has foreclosed its rights under this Deed of Trust, nothing contained in this Deed of Trust shall require Beneficiary 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 Beneficiary shall not be a waiver of the right of Beneficiary to accelerate the maturity of any of the Secured Obligations. Beneficiary'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, Beneficiary 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 Beneficiary 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 Beneficiary for all amounts advanced by Beneficiary 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 Beneficiary when the law provides no maximum limit, for any services that Beneficiary 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 Beneficiary'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 Beneficiary or Trustee, as applicable, for all costs, expenses, or other advances that may be incurred or made by Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary or Trustee:

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

**6.11.2.2** Beneficiary'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 Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused solely by the willful misconduct or bad faith of Beneficiary.

**6.11.3 INDEMNIFICATION.** TRUSTOR AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY BENEFICIARY AND 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 BENEFICIARY'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 Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary's security interest in the Project Licenses.

Such indemnity shall include, all costs, expenses and attorneys' fees incurred by Beneficiary in connection with such matters, together with interest on the indemnified liabilities at the Default Rate from the date paid or incurred by Beneficiary until repaid by Trustor, and shall be immediately due and payable to Beneficiary by Trustor upon demand and shall be secured by this Deed of Trust. This agreement by Trustor to hold harmless, indemnify, and defend Beneficiary 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 Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, 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 Beneficiary created under it, against all adverse claims. Trustor shall give Beneficiary 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.** Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Beneficiary 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.** Beneficiary 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. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, 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 Beneficiary, its agents or representatives. Neither Beneficiary, 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, Beneficiary shall give Trustor reasonable notice before entering the Property, and Beneficiary 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 Beneficiary covering any of the Property and to deliver, upon request, to Beneficiary 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. Beneficiary 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. DEFAULT AND REMEDIES.**

**7.1 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**").

**7.1.1** Failure of Trustor to (a) make any payment required under this Deed of Trust within ten (10) 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 Beneficiary 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 Beneficiary 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.

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

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

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

**7.1.5** Any breach or default by Trustor under the Leases or under any material Contract that has continued beyond any applicable cure period therefor.

**7.2 Remedies.** At any time after an Event of Default, Beneficiary 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 Beneficiary 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.

**7.2.1 Acceleration.** Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

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

**7.2.3 Receiver.** Beneficiary 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 Beneficiary 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.

**7.2.4 Entry; Protection of Security.**

**7.2.4.1** Beneficiary, 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 Beneficiary 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 Beneficiary 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 Beneficiary 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 Beneficiary in any of the foregoing.

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

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

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

**7.2.5 Lawsuits; Foreclosure.**

**7.2.5.1** Beneficiary 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).

**7.2.5.2** Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to judicially or non-judicially foreclose (each such proceeding, a "**Foreclosure Sale**") the lien hereof upon the Trustor's leasehold estate and interest in the Property or any part thereof by, in, and under the Ground Lease (the "**Foreclosure Property**") for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable Laws.

**7.2.5.3** In addition to the right to appoint a receiver upon an Event of Default, Trustee or Beneficiary 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.

**7.2.5.4** If this Deed of Trust is foreclosed by judicial action, and the Foreclosure 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.

**7.2.5.5** To the maximum extent permitted by applicable Laws, Beneficiary 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.

## **7.2.6 Power of Sale.**

**7.2.6.1** Beneficiary shall have the right to invoke the power of sale to cause Trustee to sell all or part of the Foreclosure Property in accordance with applicable Laws. Under this power of sale, Beneficiary shall have the discretionary right to cause Trustee to sell some or all of the Foreclosure Property, including any Foreclosure 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**."

**7.2.6.2** Before any Trustee's Sale, Beneficiary 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 Beneficiary may impose such terms and conditions of sale as are permitted or allowed by applicable Laws.

**7.2.6.3** From time to time in accordance with then applicable Laws, Trustee may, and in any event at Beneficiary'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.

**7.2.6.4** Also, Beneficiary 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 Beneficiary 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 Beneficiary 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 or Beneficiary hereunder or thereunder.

**7.2.7 Other Remedies.** In addition to, but not in lieu of, any other rights and remedies hereunder, Beneficiary 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. Beneficiary 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 Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary

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.

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

**7.2.8.1** For purposes of this power of sale, Beneficiary and/or (as required by applicable Laws) Trustee may elect to treat as personal property any Foreclosure Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Beneficiary and/or (as required by applicable Laws) Trustee, may dispose of any personal property in any manner permitted by Article 9 of the Project State UCC, including any public or private sale, or in any manner permitted by any other applicable Laws.

**7.2.8.2** In connection with any sale or other disposition of such Foreclosure Property, Trustor agrees that the following procedures constitute a commercially reasonable sale: Beneficiary shall mail written notice of the sale to Trustor not later than thirty (30) days prior to such sale. Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Foreclosure Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Beneficiary 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.

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

**7.2.9.1** If the Foreclosure Property to be sold at a Foreclosure Sale consists of more than one lot, parcel or item of property, Beneficiary 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 a one Foreclosure Sale or multiple Foreclosure Sales. This Section 7.2.9 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.

**7.2.9.2** If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary, 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 Beneficiary 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.

### **7.3 Purchase at Foreclosure Sale.**

**7.3.1** At any Foreclosure Sale, any person, including Trustor or Beneficiary, may bid for and acquire the Foreclosure 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, Beneficiary shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Beneficiary, upon so acquiring the Foreclosure 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.

**7.3.2** To the fullest extent not prohibited by applicable Laws, the sales price of any Foreclosure 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 Beneficiary 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 Beneficiary 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.

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

**7.3.4** 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 Beneficiary 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.

**7.4 Fair Value.** To the extent the applicable Laws require that the "fair market value" or "fair value" of the Foreclosure 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.

**7.4.1** The Foreclosure 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.

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

**7.5 Tenants.** Beneficiary shall have the right, at its option, to foreclose this Deed of Trust subject to the rights of any Tenant of the Foreclosure Property.

**7.6 Application of Foreclosure Sale Proceeds.** Beneficiary 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.

**7.7 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 Note 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 Note 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.

## **8. THE TRUSTEE.**

**8.1 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (a) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through Trustee's agents or attorneys, (c) to select and employ, in and about the execution of Trustee's duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and

Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, and Trustee shall not be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (d) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the 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.

**8.2 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.

**8.3 Successor Trustees.** Trustee may resign by giving notice of resignation in writing to Beneficiary. If Trustee dies, resigns or becomes disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary'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, Beneficiary 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 Beneficiary. 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.

**8.4 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.

**8.5 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 Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

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

## 9. MISCELLANEOUS PROVISIONS.

**9.1 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 Beneficiary and contain further agreements and affirmative and negative covenants by Trustor that apply to this Deed of Trust and to the Property.

### 9.2 No Waiver or Cure.

**9.2.1** Each waiver by Beneficiary 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 Beneficiary to take action on account of any default of Trustor. Consent by Beneficiary 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 Beneficiary's consent to be obtained in any future or other instance.

**9.2.2** 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 Beneficiary 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 Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

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

**9.2.2.2** Automatic termination of the License to collect Rents and administer the Leases.

**9.2.2.3** Beneficiary 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.

**9.2.2.4** Beneficiary 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.

**9.2.2.5** Beneficiary takes any action to preserve its security hereunder or cure any default of Trustor under the Leases or Contracts.

**9.2.2.6** Beneficiary 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 Beneficiary under this Deed of Trust.

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

**9.2.2.8** Beneficiary 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.

**9.2.2.9** Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

### 9.3 Powers of Beneficiary.

**9.3.1** If Beneficiary 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 Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

**9.3.2** Beneficiary 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.

**9.3.3** From time to time, Beneficiary 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. Beneficiary may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

**9.4 Assignment.** All rights of Beneficiary 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 Beneficiary in, to, and under this Deed of Trust shall pass to and may be exercised by any assignee of such rights of Beneficiary. Trustor hereby agrees that if Beneficiary gives notice to Trustor of an assignment of said rights, upon such notice, the liability of Trustor to the assignee of Beneficiary shall be immediate and absolute. Trustor will not set up any claim against Beneficiary or any intervening assignee as a defense, counterclaim, or setoff to any action brought by Beneficiary 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.

**9.5 No Offset.** Trustor's obligation to timely pay and perform all obligations under the Note, 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 Beneficiary 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 Beneficiary or any other person or entity if Trustor maintains a separate action thereon.

**9.6 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, beneficiary 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 Beneficiary 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 Beneficiary or Trustee; and (ii) Trustor pays the Mortgage Tax (including any tax on the payment made) within thirty (30) days after notice from Beneficiary that the tax law has been enacted.

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



**9.8 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.

**9.9 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.

**9.10 Interpretation.**

**9.10.1** 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.

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

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

**9.10.4** 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.

**9.11 In-House Counsel Fees.** Whenever Trustor is obligated to pay or reimburse Beneficiary for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel.

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

**9.12.1** Trustor hereby agrees that it will not apply for or avail itself of any appraisalment, 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.

**9.12.2** 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.

**9.12.3** 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.

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

**9.13 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 Beneficiary's security for the Secured Obligations, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

**9.14 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.

**9.15 Beneficiary'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 Beneficiary not to exceed the maximum amount secured hereby.

**9.16 WAIVER OF TRIAL BY JURY.** TRUSTOR AND BENEFICIARY 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 OR BENEFICIARY. 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 BENEFICIARY 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.

**9.17 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.

**9.18 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.

**9.19 Ground Leasehold Rider.** The Ground Leasehold Rider attached hereto, and by this reference is incorporated in this Deed of Trust, are additional provisions of this Deed of Trust that are applicable to Trustor, with respect to Trustor's leasehold estate and interest in, under, and by the Ground Lease. Trustor additionally represents and warrants the following concerning the Ground Lease:

**9.19.1 Delivery of Ground Lease.** Trustor has delivered to Lender a true, correct and complete copy of the Ground Lease, together with all amendments, supplements, modifications, assignments or transfers thereto, if any, as described in the first paragraph of this Deed of Trust, and Trustor represents that other than as set forth in the first paragraph of this Deed of Trust, the Ground Lease has not been amended, supplemented, modified, assigned or transferred. Trustor further represents that it holds the sole leasehold estate and interest in the Ground Lease, subject to no subleases (other than those previously disclosed in writing by Trustor to Lender).

**9.19.2 Performance of the Ground Lease.** Trustor shall not do any act which would destroy or materially impair the benefits to Lender of this Deed of Trust, and without limiting the generality of the foregoing, Trustor agrees, subject to Trustor's rights of offset (if any) under the Ground Lease: (i) to perform promptly all obligations, agreements, covenants, terms and conditions imposed upon or assumed by it under the Ground Lease; (ii) not to take any action or omit to take any action which would affect or permit the termination of the Ground Lease; and (iii) to pay, when due, all basic rent and all other payments and charges under the Ground Lease, including, without limitation, insurance, taxes and assessments. Trustor agrees to perform all other obligation and agreements under the Ground Lease and Trustor agrees not to take any action or omit to take any action which would affect or permit the termination of said leasehold.

**9.19.3 No Surrender, Termination, Amendment or Sublease.** Trustor shall not, without the prior written consent of Lender: (i) surrender Trustor's leasehold estate and interest under the Ground Lease; (ii) terminate or cancel the Ground Lease; (iii) fail to renew or exercise any options to renew the Ground Lease; (iv) fail to maintain the Ground Lease in full force and effect; or (v) sublease, assign or transfer all or any portion of Trustor's leasehold estate and interest under the Ground Lease. Trustor shall not, without the prior written consent of Lender: (x) consent or refuse to consent to any action that the Ground Lessor desires to take under or with respect to any Ground Lease; (y) modify, change, supplement, alter or amend the Ground Lease, either orally or in writing; or (z) waive or release the Ground Lessor from any obligations or conditions to be performed by Ground Lessor under the Ground Lease. Consent to one modification, change, supplement, alteration, amendment or sublease shall not be deemed to be a waiver of the right to require consent to other, future or successive modifications, changes, supplements, alterations,

amendments, subleases, assignments or transfers. Trustor shall promptly deliver to Lender a true, correct and complete copy of any modification, change, supplement, alteration or amendment to the Ground Lease.

**9.19.4 No Subordination.** Trustor shall not subordinate or consent to the subordination of its leasehold estate or interest in the Ground Lease to any mortgage, security deed, deed of trust, lease or other interest in all or any part of the Property without the written consent of Lender.

**9.19.5 Notice of Default.** Trustor shall give immediate notice to Lender of the receipt by it of any notice of default or of the exercise of any remedies relating to defaults or breach of the Ground Lease from the Ground Lessor, and shall deliver copies of any and all such notices to Lender within five (5) Business Days after the receipt thereof. Trustor also shall furnish Lender any and all information that Lender may request concerning Trustor's performance under the Ground Lease.

**9.19.6 Lender's Right to Cure.** Lender shall be entitled to take all actions necessary to cure any default by Trustor under the Ground Lease within the time provided by the terms of the Ground Lease for such purpose. Upon receipt by Lender from the Ground Lessor of any written notice of default by Trustor under the Ground Lease, Lender may rely thereon and take any action to cure such default even though the existence of such default or the nature thereof is questioned or denied by Trustor or by any other party. Trustor hereby expressly grants to Lender and agrees that Lender shall have, the absolute and immediate right to enter in and upon the Subject Property or any part thereof to such extent and as often as Lender, in its reasonable discretion, deems necessary or desirable in order to prevent or to cure any such default with respect to the Ground Lease. Lender may pay and expend such sums of money as Lender in its reasonable discretion deems necessary for any such purpose, and Trustor hereby agrees to pay to Lender within five (5) days after demand, all such sums so paid and expended by Lender, together with interest thereon from the date of such payment at an annual rate equal to the Default Rate set forth in the Loan Agreement. All sums so paid and expended by Lender and the interest thereon shall be added to and be secured by the lien of this Deed of Trust.

**9.19.7 Notice of Change in Title.** Trustor shall notify Lender of any acquisition by Trustor of the fee title in any of the property covered by the Ground Lease. If Trustor obtains any further interest in the property covered by the Ground Lease, including such fee title such interest shall be covered by this Deed of Trust and Trustor shall execute and deliver to Lender such additional documents as are reasonably necessary to protect Lender's interest therein.

**9.19.8 No Release.** No release or forbearance of any of Trustor's obligations under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Trustor from any obligations under this Deed of Trust, including release from the obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of any of the terms, provisions, covenants, conditions and agreements contained in the Ground Lease to be kept, performed and complied with by Trustor as provided therein.

**9.19.9 No Merger.** Unless Lender shall consent in writing, so long as this Deed of Trust is in effect, the fee title to the property covered by the Ground Lease and Trustor's leasehold estate and interest created by the Ground Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates either in the Ground Lessor, Lender or Trustor by purchase, operation of law or otherwise. If Lender shall acquire such fee title and leasehold estate and interest by foreclosure of this Deed of Trust or otherwise, then such estates shall not merge as a result of such acquisition but shall remain separate and distinct for all purposes after such acquisition unless and until Lender elects to merge such estates.

**9.19.10 No Conflict.** The provisions hereof shall be deemed to be obligations of Trustor in addition to Trustor's obligations under the Ground Lease; provided, however, that nothing in this Deed of Trust shall be construed as requiring the taking of or the committing to take any action by Trustor or Lender that would cause a default under the Ground Lease. The inclusion in this Deed of Trust of any covenants and agreements relating to similar matters under which Trustor is obligated under the Ground Lease shall not restrict or limit Trustor's duties and obligations to keep and perform promptly all of its covenants, agreements and obligations under the Ground Lease.

**9.19.11 Conditional Assignment of Ground Lease.** As provided in this Deed of Trust, Trustor has assigned, transferred, set over and delivered to the Lender, for collateral purposes only, all of Trustor's rights, title

and interest in, to and under the Ground Lease. By its acceptance hereof, Lender hereby covenants and agrees that so long as there exists no Default hereunder, Trustor shall have the right to possess and enjoy the Premises, subject to the terms and conditions contained herein.

**9.19.12 Attorney-in-Fact.** Effective upon the occurrence and during the continuance of a Default, Trustor hereby constitutes and appoints Lender the true and lawful attorney-in-fact, coupled with an interest, of Trustor, empowered and authorized in the name, place and stead of Trustor to exercise all rights of Trustor under the Ground Lease. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Lender, its successors and assigns, so long as any part of the Indebtedness remains unpaid or undischarged.

**9.19.13 New Ground Lease.** If, upon the occurrence and during the continuance of a Default, Lender or its designee shall acquire or obtain a new ground lease covering any portion of the property covered by the Ground Lease (a "**New Ground Lease**"), then Trustor shall have no right, title or interest whatsoever in or to such New Ground Lease, or any proceeds or income arising from the estate arising under such New Ground Lease, including any from any sale or other disposition thereof. Lender or its designee shall hold such New Ground Lease free and clear of any right or claim of Trustor.

**9.19.14 Assignment of § 365(h) Election.** Trustor acknowledges that pursuant to Section 365 of the Bankruptcy Reform Act of 1978 (as the same may be amended or recodified from time to time, called the "Bankruptcy Reform Act") it is possible that a trustee in bankruptcy of the Ground Lessor, or the Ground Lessor as a debtor-in-possession, could reject the Ground Lease, in which case Trustor, as tenant, would have the election described in Section 365(h) of the Bankruptcy Reform Act (which election, as it may be amended, revised or recodified from time to time, and together with any comparable right under any other state or federal law relating to bankruptcy, reorganization or other relief for debtors, whether now or hereafter in effect, is called the "Election") to treat the Ground Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of the Ground Lease and any renewal or extension thereof that is enforceable by the tenant under applicable non-bankruptcy law.

**9.19.14.1** Trustor agrees not to terminate or permit termination of the Ground Lease by exercise of the Election without the prior written consent of Lender. Trustor acknowledges that because the Ground Lease is a significant part of the Lender's security for the obligations secured under this Deed of Trust, the Lender does not anticipate that it would consent to termination of the Ground Lease and shall not under any circumstances be obliged to give such consent.

**9.19.14.2** In order to secure the covenant made in this Deed of Trust and as security for the other obligations secured under this Deed of Trust, Trustor hereby assigns the Election to Trustee and Lender under this Deed of Trust. Trustor acknowledges and agrees that this assignment of the Election is one of the rights which Trustee and Lender may use at any time in order to protect and preserve the other rights and interests of Trustee and Lender under this Deed of Trust, since exercise of the Election in favor of terminating the Ground Lease would constitute waste hereunder.

**9.19.14.3** Trustor acknowledges and agrees that the Election is in the nature of a remedy and is not a property interest which Trustor can separate from the Ground Lease. Therefore, Trustor agrees that exercise of the Election in favor of preserving the right to possession under the Ground Lease shall not be deemed to constitute a taking or sale of the subject property by Trustee or Lender and shall not entitle Trustor to any credit against the obligations secured by this Deed of Trust.

**9.19.14.4** Trustor further acknowledges and agrees that if the Election is exercised in favor of Trustor remaining in possession, then Trustor's resulting right under the Ground Lease to possession and use of (and rents and profits from) the real property described in Exhibit A, as adjusted by the effect of Section 365 of the Bankruptcy Reform Act, shall be part of the subject property and shall be subject to the lien created by this Deed of Trust. However, Trustor acknowledges and agrees that the right under the Ground Lease to possession and use of the real property described in Exhibit A, as so adjusted, is not equivalent to the leasehold interest which is the subject property at the time of execution of this Deed of Trust. Therefore, Trustor agrees that rejection of the Ground Lease under the Bankruptcy Reform Act by a trustee in bankruptcy of the Ground Lessor, or by the Ground Lessor as a debtor-

in-possession, shall constitute a default under this Deed of Trust and shall entitle Trustee and Lender to all rights and remedies under this Deed of Trust.

**9.20 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.

**9.21 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 BENEFICIARY FROM CLAIMS OR LOSSES ARISING AS A RESULT OF BENEFICIARY'S OWN NEGLIGENCE.

**9.22 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:

**9.22.1.1** 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 9.22.1.1, 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.

**9.22.1.2** 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.

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

**9.22.1.4** 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 Beneficiary with evidence of each such payment.

**9.22.1.5** 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.

**9.22.1.6** 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 Beneficiary set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the State Engineer's approval of any application filed by Trustor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now

has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

#### **9.22.2 Utah Construction Registry.**

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

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

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

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

**9.22.2.5** 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 Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Annotated § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

**9.22.2.6** If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying

the amount claimed to be due or by procuring the release of the 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 Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

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

**9.22.4 Deficiency.** Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary 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:

**9.22.4.1** 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.

**9.22.4.2** 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.

**9.22.4.3** 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.

**9.22.5 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 Beneficiary the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. 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.

**9.22.6 Notice.** Beneficiary 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.

**9.22.7 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 9.22.8 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.

**9.22.8 Status of the Property.** Trustor acknowledges that the stated purpose for which this Deed of Trust is given is to finance and construct the Project for University of Utah student residential rental property. Accordingly, to permit Beneficiary to comply with *Utah Code Annotated* § 57-1-25 and other applicable law, Trustor agrees that promptly upon Beneficiary's request, it will provide to a Beneficiary 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 Beneficiary from time to time upon request from Beneficiary. To further allow Beneficiary 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 Beneficiary.

**9.22.9 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.

**9.22.10 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 Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

**9.22.11 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.**

**9.23 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:

- 9.23.1** Exhibit A – Legal Description
- 9.23.2** Exhibit B – Personal Property Description
- 9.23.3** Ground Leasehold Rider

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



Executed as of the date of this Deed of Trust.

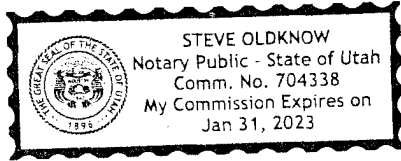
**TRUSTOR/DEBTOR**

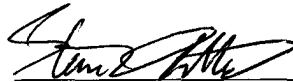
**IVORY UNIVERSITY HOUSE, L3C,**  
a Utah low-profit limited liability company

By   
Name: RYAN R. TESCH  
Its: MANAGER

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.

On this 9<sup>th</sup> day of May, 2022, before me, STEVE OLDKNOW, a Notary Public in and for said State, personally appeared **RYAN R. TESCH**, Manager of **IVORY UNIVERSITY HOUSE, L3C**, a Utah low-profit limited liability company, and acknowledged to me that the foregoing instrument was the act of said entity and signed on behalf of said entity.



  
NOTARY PUBLIC  
Residing at: SALT LAKE  
My commission expires: 01-31-23

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

The leasehold estate and interest created by the Lease Agreement executed by The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, as lessor, to Ivory University House L3C, a low-profit limited liability company, as lessee, dated as of September 30, 2021, notice of which is given by the Memorandum of Lease dated April 19, 2022 and recorded in the Official Records of the County Recorder of Salt Lake County, Utah on April 21, 2022 as Entry No. 13937622 in Book 11331 at Page 3184 and a Corrective Memorandum of Lease that was recorded in the Official Records of the County Recorder of Salt Lake County, Utah on May 6, 2022, as Entry No. 13946973 in Book 11336 at Page 4283, demising and leasing the following described subject property situated in Salt Lake County, Utah, to-wit:

A parcel of land being part of an entire tract of land described in that Quit Claim Deed recorded February 5, 2001 as Entry No. 7813416 in Book 8421, at Page 4755 in the Office of the Salt Lake County Recorder. Said parcel of land is located in the Southeast Quarter of Section 4, Township 1 South, Range 1 East, Salt Lake Base and Meridian and is described as follows:

Beginning at a point on the southeasterly right-of-way line of South Campus Drive, which is 2039.23 feet East and 1055.03 feet North of U.S. Government Monument No. 5, said Monument being 2453.80 feet East and 3962.31 feet South of the Northwest Corner of Section 4; thence N. 55°40'00" E. 310.10 feet along said southeasterly right of way line of South Campus Drive to a point of non-tangency with a 48.13-foot radius curve to the right, concave southerly (Radius point bears S. 29°53'00" E.); thence easterly 68.77 feet along the arc of said curve, through a central angle of 81°52'19" (Chord bears S. 78°56'50" E. 63.07 feet) to a westerly right-of-way line of Wasatch Drive; thence S. 15°19'19" E. 651.24 feet along said westerly right-of-way line; thence S. 50°14'19" W. 17.62 feet; thence S. 55°45'19" W. 252.41 feet; thence N. 34°09'34" W. 488.49 feet to a point of non-tangency with a 125.00-foot radius curve to the left, concave westerly (Radius point bears N. 37°48'29" W.); thence northerly 185.61 feet along the arc of said curve, through a central angle of 85°04'45" (Chord bears N. 09°39'09" E. 169.02 feet); thence N. 32°53'14" W. 40.21 feet to a point of tangency with a 13.00-foot radius curve to the right, concave southeasterly; thence Northeasterly 14.77 feet along the arc of said curve, through a central angle of 65°06'40" (Chord bears N. 00°19'54" W. 13.99 feet) to the Point of Beginning.

Tax Id No.: 16-04-400-013

**EXHIBIT B**  
**DESCRIPTION OF PERSONAL PROPERTY**

All of Trustor's assets owned by Trustor or in which Trustor has a leasehold or other interest that are now or hereafter located on, or used, earned, or generated in connection with, the Property, the Improvements, or the Project including, without limitation, "Accounts", "Cash Proceeds", "Chattel Paper", "Collateral", "Deposit Accounts", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-credit Rights", "Noncash Proceeds", and "Tangible Chattel Paper", as defined in the Uniform Commercial Code. Such assets include, without limitation:

(a) All of Trustor's rights in all personal property, (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, construction materials and software embedded in any of the foregoing) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Property, the Improvements, the Project or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Trustor in and to personal property which is leased and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Property, Improvements, the Project;

(b) All of Trustor's rights in all fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Indebtedness remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Property, the Improvements, the Project, or any other part of the Property, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of any portion of the Property or Improvements, rights to receive capital contributions or subscriptions from Trustor's partners or shareholders, amounts payable on account of the sale of partnership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, deposit accounts, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, and principal, interest, and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments evidencing securing or guarantying the same;

(d) All of Trustor's rights in all other intangible property (and related software) and rights relating to the Property, the Improvements, the Project, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, Trustor's interests (to the extent they exist) in all governmental and private contracts, agreements, permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Property as a result of the Ground Lease, including Trustor's interests in: (i) the Improvements, (ii) the Project, (iii) all names under or by which the Property, Improvements, and Project may at any time be operated or known, (iv) all rights to carry on business under any such names, or any variant thereof, (v) all trade names and trademarks, copyrights, patent and copyright applications and registrations, patterns, designs, drawings, plans and specifications, other proprietary information and intellectual property, and royalties relating in any way to the Property, the Improvements, the Project, and all management agreements with respect to the management and operation of the Property, and (vii) all goodwill and software in any way relating to the Property, the Improvements and the Project;

(e) All of Trustor's rights under all insurance policies covering the Property, the Improvements,, the Project and the other parts of the Property and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All of Trustor's rights in all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Property;

(g) All of Trustor's rights in all water, water stock and water rights relating to the Property, including, without limitation, (i) the right to use surface water or groundwater on, under, around or appurtenant to the Property, (ii) all decreed rights; (iii) water rights represented by any permit issued by the Utah Division of Water Rights; (iv) diligence rights or claims; (v) approved applications to appropriate; and (vii) unapproved applications to appropriate;

(h) All of Trustor's rights in all causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Property, the Improvements, the Project, or any other part of the Property, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Property, the Improvements, the Project, or any other part of the Property, or for any loss or diminution in value of the Property, the Improvements, the Project or any other part of the Property;

(i) All of Trustor's rights in all architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements and all studies, data, and drawings related thereto; and also all contracts and agreements of Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on the Property;

(j) All of Trustor's rights as a declarant, developer or otherwise, including, without limitation, all voting and other rights under all covenants, conditions and restrictions affecting the Property, the Improvements, and the Project;

(k) All Trustor's rights in proceeds of the Loan evidenced by the Note;

(l) All of Trustor's rights under any agreements affecting the Property, whether now existing or hereafter arising;

(m) All of Trustor's rights in all revenues, royalties, fees, moneys payable as damages (including payments by reason of the rejection of a lease in a bankruptcy proceeding), income, receivables, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Trustor or its agents or employees from any and all sources arising from or attributable to the Property, including all revenues and credit card receipts collected from guest rooms, restaurants, meeting rooms, banquet rooms and recreational facilities, parking charges, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of any use and occupancy of the Property, or rendering of services by Trustor or any of its agents or employees or any operator or manager of the Project or the commercial space located in the Property or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals (but not including gross receipts of licensees, lessees and concessionaires), health club membership fees, food and beverage wholesale and retail sales, service charges, vending and game machine receipts, fees and charges for the use of athletic facilities, food services, service charges, laundry charges, and telephone, telecopy and other communication charges and proceeds, if any, from business interruption or other loss of income insurance, together with all proceeds from the Foreclosure Sale or other related disposition of any part of the Property; and

(n) All of Trustor's rights in proceeds from the sale or disposition of any of the aforesaid collateral.

Trustor additionally hereby unconditionally assigns, transfers, and sets over to Beneficiary all of Trustor's claims and rights to the payment of damages arising from any rejection of the Ground Lease under the Bankruptcy Code. Grantee shall have the right to proceed in its own name or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including the right to file and prosecute, either in its own name or in the name of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case under the Bankruptcy Code in respect to the Ground Lessor or any fee owner. This assignment constitutes a present, absolute, irrevocable, and unconditional assignment of the foregoing claims, rights and remedies, and shall

continue in effect until all of the Secured Obligations have been fully satisfied and discharged. Any amounts received by Trustor or Ground Lessor as damages arising out of the rejection of the Ground Lease in bankruptcy shall be applied first to all costs and expenses of Beneficiary (including reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section, and then in accordance with the provisions of the Leasehold Deed of Trust, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing.

As used in this Exhibit B, the capitalized terms not defined in this Exhibit B shall have the meaning defined in the Loan Agreement.

## GROUND LEASEHOLD RIDER

The following terms and conditions are included as additional provisions of this Deed of Trust:

1. **Compliance with Ground Lease.** Trustor shall comply fully with all of the terms of that certain ground lease made by The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole ("**Ground Lessor**"), as "lessor," and Trustor, as "lessee" (the "**Ground Lease**"), including, without limitation, the obligation to pay all rent and other charges when due.

2. **No Termination.** Trustor shall not cancel, terminate, or surrender, or permit any cancellation, termination, or surrender of the Ground Lease, in whole or in part, without Beneficiary's prior written consent. In addition, Trustor will not, without Beneficiary's prior written consent, modify or amend, or permit any modification or amendment of, the Ground Lease in any respect, and any attempt on the part of Trustor to exercise any such right without Beneficiary's prior written consent shall be null and void and of no effect.

3. **Beneficiary's Right to Cure.** Trustor shall take all action necessary to preserve and keep unimpaired the rights of Trustor as lessee under the Ground Lease, and to prevent any default under the Ground Lease, or any termination, surrender, cancellation, forfeiture, or impairment of the Ground Lease. If Trustor fails to make any payment required to be made by Trustor under the Ground Lease or to comply with any other term of the Ground Lease, Trustor agrees that Beneficiary may, but shall not be obligated to, take any action on behalf of Trustor to cure any default by Trustor under the Ground Lease. Trustor shall pay to Beneficiary, on demand, any amounts so expended by Beneficiary, with interest accruing at the Default Rate (as defined in the Loan Agreement) from the date of each such expenditure, and repayment of such amounts shall be secured by this Deed of Trust.

4. **Defaults.** Trustor will enforce the obligations of Ground Lessor under the Ground Lease so that Trustor may enjoy all of the rights granted to it under the Ground Lease, and will promptly notify Beneficiary in writing of any default by Ground Lessor or by Trustor under the Ground Lease. Trustor shall promptly notify Beneficiary upon receiving any notice of default from Ground Lessor, and will deliver to Beneficiary a true copy of each such notice. If Ground Lessor delivers to Beneficiary a copy of any notice of default given to Trustor, such notice shall constitute full authority to Beneficiary for any action or inaction of Beneficiary in reliance on such notice of default.

5. **No Merger.** Trustor agrees that, unless Beneficiary otherwise expressly consents in writing, the fee title to the Premises and the leasehold estate and interest shall not merge, but, instead, shall always remain separate and distinct, notwithstanding the union of the fee estate and the leasehold estate and interest in Ground Lessor, Trustor, or a third party by purchase or otherwise. If Trustor acquires the fee title or any other estate, title or interest in the Premises, this Deed of Trust shall attach to and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, security instrument, or conveyance, become and be subject to the lien of and covered by this Deed of Trust. Trustor shall pay the cost of any title endorsements requested by Beneficiary to insure the lien of this Deed of Trust against Trustor's fee interest.

6. **No Release.** No release or forbearance of any of Trustor's obligations under the Ground Lease shall release Trustor from any of its obligations under this Deed of Trust, including Trustor's obligation with respect to the payment of rent as provided for in the Ground Lease and the performance of all other obligations of Trustor under the Ground Lease.

7. **Beneficiary's Rights Upon Default.** Upon the occurrence of an Event of Default, Trustor shall not make any election or give any consent or approval (other than the exercise of a renewal right or extension right authorized or required by this Deed of Trust) for which a right to do so is conferred upon Trustor as lessee under the Ground Lease without Beneficiary's prior written consent. Upon the occurrence of an Event of Default, all such rights, together with the right of termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, all of which Trustor assigns to Beneficiary, shall vest in and may be exercised only by Beneficiary.

## **8. Proceedings.**

**8.1** If any lawsuit, action, arbitration, appraisal proceeding, or other proceeding is instituted to evict Trustor, to recover possession of the Premises, to obtain an appraisal of the Premises, or for any other purpose affecting the Ground Lease or this Deed of Trust, Trustor will, immediately upon service thereof on or to Trustor, deliver to Beneficiary a true copy of each petition, summons, complaint, notice of motion, order to show cause, and of all other provisions, pleadings, and papers, however designated, served in any such action or proceeding.

**8.2** In any lawsuit, action, arbitration, appraisal proceeding, or other proceeding related to the control, ownership, appraisal, or interest in the Premises or otherwise related to the Ground Lease, Beneficiary shall have the right to intervene and participate in any such proceeding, and Trustor shall confer with Beneficiary to the extent Beneficiary deems necessary for Beneficiary's protection. In any dispute resolution proceeding with respect to the Ground Lease, Trustor shall select arbitrator(s), mediator(s), and appraiser(s) approved in writing by Beneficiary; *provided, however*, that if an Event of Default exists at the time any such proceeding commences (including any default by Trustor under the Ground Lease), Beneficiary shall have, and is hereby granted, the sole and exclusive right to designate and appoint, on behalf of Trustor, all arbitrator(s), mediator(s), and appraiser(s) in such proceedings.

**9. Renewal Options.** Trustor may exercise any option or right to renew or extend the term of the Ground Lease. Trustor shall give Beneficiary simultaneous written notice of the exercise of such option or right to renew or extend, together with a copy of the instrument given to Ground Lessor under the Ground Lease exercising such option or right, and, thereafter, shall promptly deliver to Beneficiary a copy of any acknowledgment by Ground Lessor under such Ground Lease with respect to the exercise of such option or right. Trustor shall exercise any option or renewal that is necessary to extend the term of the Ground Lease beyond the term of this Deed of Trust, to comply with any Laws affecting Trustor or Beneficiary, or that is necessary, in Beneficiary's reasonable judgment, to preserve the value of the security intended to be afforded by this Deed of Trust. Trustor shall promptly provide evidence of the exercise of such option or right to Beneficiary's reasonable satisfaction. Trustor hereby grants to Beneficiary all right and authority to, and agrees that Beneficiary may, exercise such option or right in the name of Trustor or in its own name (a) if Trustor fails to exercise any option or right within thirty (30) days of the deadline for exercising such right or (b) upon the occurrence of any Default or Event of Default.

## **10. Bankruptcy.**

**10.1** The terms of and lien created by this Deed of Trust shall attach to all of Trustor's rights and remedies at any time arising under or pursuant to Section 365 of the Bankruptcy Code, 11 U.S.C. § 365, including all of Trustor's rights to remain in possession of the Premises under 11 U.S.C. § 365(h), and Beneficiary shall be able to exercise and benefit from all such rights and remedies to the full extent permissible under the Bankruptcy Code.

**10.2** Trustor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Trustor's claims and rights to the payment of damages arising from any rejection of the Ground Lease under the Bankruptcy Code. Beneficiary shall have the right to proceed in its own name or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including the right to file and prosecute, either in its own name or in the name of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case under the Bankruptcy Code in respect to the Ground Lessor or any fee owner. This assignment constitutes a present, absolute, irrevocable, and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Secured Obligations have been fully satisfied and discharged. Any amounts received by Beneficiary as damages arising out of the rejection of the Ground Lease in bankruptcy shall be applied first to all costs and expenses of Beneficiary (including reasonable attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this Section, and then in accordance with the provisions of this Deed of Trust. Trustor shall promptly make, execute, acknowledge and deliver, in form and substance satisfactory to Beneficiary, a UCC Financing Statement (Form UCC-1) and all such additional instruments, agreements and other documents, as may at any time hereafter be required by Beneficiary to effectuate and carry out the assignment made pursuant to this Section.

**10.3** If pursuant to Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. § 365(h)(1), Trustor seeks to offset against rental payments due under the Ground Lease the amount of any damages caused by the nonperformance of the Ground Lease after the rejection of the Ground Lease under the Bankruptcy Code, Trustor shall, prior to effecting such offset, notify Beneficiary of its intent to do so, setting forth the amounts proposed to be so offset and the basis therefor. Beneficiary shall have the right to object to all or any part of such offset that, in the reasonable judgment of Beneficiary, would constitute a breach of the Ground Lease, and in the event of such objection, Trustor shall not effect any offset of the amounts so objected to by Beneficiary. Neither Beneficiary's failure to object nor any objection relating to such offset shall constitute an approval of any such offset by Beneficiary.

**10.4** If any action, proceeding, motion or notice is commenced or filed in respect of the Ground Lessor or any fee owner, the Premises or the Ground Lease in connection with any case under the Bankruptcy Code, Beneficiary shall have the option, exercisable upon notice from Beneficiary to Trustor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Trustor in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents or other documents reasonably required by Beneficiary in connection therewith. Trustor shall, upon demand, pay to Beneficiary all costs and expenses (including reasonable attorneys' fees) paid or incurred by Beneficiary in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Trustor as required under this Deed of Trust shall be added to the Secured Obligations. Trustor shall not commence any action, suit, proceeding or case, or file any application or make any motion (unless such motion is for the purpose of protecting the Ground Lease and its value as security for the Secured Obligations), in respect of the Ground Lease in any such case under the Bankruptcy Code without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed.

**10.5** Trustor shall, after obtaining knowledge thereof, promptly notify Beneficiary of any filing by or against the Ground Lessor or other fee owner of a petition under the Bankruptcy Code. Trustor shall promptly deliver to Beneficiary, following receipt, copies of any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

**10.6** If a petition under the Bankruptcy Code is filed by or against Trustor, and Trustor, as lessee under the Ground Lease, intends to reject the Ground Lease pursuant to Section 365(a) of the Bankruptcy Code, Trustor shall give Beneficiary not less than thirty (30) days' prior written notice of the date on which Trustor will apply to the Bankruptcy Court for authority to reject the Ground Lease. Beneficiary shall have the right, but not the obligation, to serve upon Trustor within such thirty (30) day period a notice stating that Trustor shall assume and assign the Ground Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code and this Security Agreement. If Beneficiary serves upon Trustor the notice described in the preceding sentence, Trustor shall not seek to reject the Ground Lease and shall comply with Beneficiary's demand.

**11. No Assumption.** Notwithstanding anything to the contrary contained herein, Beneficiary does not assume any obligations, and shall have no liability, under the Ground Lease by reason of its acceptance of this Deed of Trust.

**12. Mortgage Rights Under Ground Lease.** Nothing contained herein shall in any way limit or reduce any rights of Beneficiary granted under the Ground Lease.

TRUSTOR'S INITIALS 