

**UPON RECORDING, RETURN TO:**

Pacific Life Insurance Company  
700 Newport Center Drive  
Newport Beach, California 92660  
Attention: Real Estate Investments  
Closing Area - Loan No: 219620201

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(Space Above For Recorder's Use)

**DEED OF TRUST, FINANCING STATEMENT  
AND SECURITY AGREEMENT  
(WITH ASSIGNMENT OF RENTS AND FIXTURE FILING)**

TRUSTOR: UNIVERSITY PLACE SPE L.L.C., a Utah limited liability company

TRUSTEE: STEWART TITLE COMPANY

LENDER: PACIFIC LIFE INSURANCE COMPANY, a Nebraska corporation

PROJECT: University Place Mall

ADDRESS: 575 East University Parkway, Orem, UT 84097

Loan No.: 219620201

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*Handwritten initials or signature*

**DEED OF TRUST, FINANCING STATEMENT  
AND SECURITY AGREEMENT  
(WITH ASSIGNMENT OF RENTS AND FIXTURE FILING)**

**THIS DEED OF TRUST, FINANCING STATEMENT AND SECURITY AGREEMENT (WITH ASSIGNMENT OF RENTS AND FIXTURE FILING)** (this "Deed of Trust") is made as of December 18, 2019 between UNIVERSITY PLACE SPE L.L.C., a Utah limited liability company (hereinafter called "Trustor" or "Borrower"), with its principal place of business at c/o Woodbury Corporation, 2733 East Parleys Way, Suite 300, Salt Lake City, Utah 84109; STEWART TITLE COMPANY (the "Trustee"), with a principal place of business at c/o Stewart Title Insurance Agency of Utah Inc., 2733 East Parleys Way, Suite 100, Salt Lake City, Utah 84109; and PACIFIC LIFE INSURANCE COMPANY, a Nebraska corporation (together with its successors and assigns, hereinafter called "Lender"), with its principal place of business at 700 Newport Center Drive, Newport Beach, California 92660. All capitalized terms not expressly defined herein or by reference to another document or source shall have the meanings ascribed to such terms in the Loan Agreement (as defined below).

WITNESSETH:

WHEREAS, for value received, pursuant to the terms of that certain Term Loan Agreement, of even date herewith (as amended, modified, supplemented, extended, renewed, or replaced from time to time, the "Loan Agreement") between Trustor and Lender, Trustor has executed and delivered to Lender (i) that certain Secured Promissory Note of even date herewith payable to the order of Lender in the aggregate maximum principal amount of One Hundred Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$100,850,000.00) (such Secured Promissory Note and any and all extensions, substitutions, replacements, rearrangements, restatements, modifications, and/or renewals thereof being referred to herein collectively as the "Note"), and (ii) this Deed of Trust as security for the payment of the Note;

NOW, THEREFORE, in consideration of Lender's entering into the Loan Agreement and making the Loan evidenced by the Note, and in order to secure (i) repayment of all Loan Indebtedness, (ii) the performance and observance by Trustor of all covenants, conditions, and agreements in this Deed of Trust, and (iii) the performance, observance and/or payment of all other Secured Obligations (as defined below), Trustor irrevocably mortgages, gives, grants, conveys, bargains, sells, transfers, assigns, confirms, and pledges to Trustee, in trust, with power of sale and right of entry and possession, and grants to Lender a security interest in, all of Trustor's present and future estate, right, title and interest in and to the following described property (the property described in subsections (A) through (W) below is hereinafter referred to as the "Secured Property"):

(A) The real property located in the County of Utah, State of Utah described in the attached Exhibit A which is incorporated into this Deed of Trust by this reference (the "Land"), and all minerals, oil, gas and other hydrocarbon substances on the Land, as well as all development rights, air rights, water, water rights, water stock, parking, parking rights, wastewater capacity rights, if any, all other rights relating to sewage treatment capacity, water capacity and utilities serving the Land or the Improvements (as defined below), and general intangibles relating to the Land, its development or use;

(B) All present and future structures, buildings, improvements, appurtenances and fixtures of any kind on the Land, including, but not limited to, any improvements to be constructed on the Land and all apparatus, equipment, machinery and appliances used in connection with the operation, management, use, enjoyment or occupancy of the Land, or in any construction upon or development of the Land, including, but not limited to, heating and air-conditioning systems; elevators and escalators; facilities used to provide gas, water, electricity, other utility and communication services, plumbing, refrigeration, or ventilation; sprinkler protection and other fire control systems; alarm systems; laundry, drying, and dishwashing systems; garbage disposal and waste removal systems; and fitness, recreation and other services and systems on the Land; and all window coverings, drapes and rods, curtain fixtures, shades, awnings, venetian blinds, light fixtures, screens, screen doors, storm doors and windows, stoves and ranges, microwaves, built-in furniture, shelving, partitions, carpeting, floor coverings, and other installations; it being intended and agreed that all such items will be conclusively considered to be a part of the Land encumbered by this Deed of Trust, whether or not attached or affixed to the Land (collectively, the "Improvements"); it being understood that the enumeration of any specific items as Improvements herein shall in no way result in or be held to exclude any items not specifically mentioned;

(C) All appurtenances of the Land and Improvements and all rights of Trustor in and to any streets, roads or public places, easements or rights of way, or parking rights, relating to the Land or Improvements;

(D) All of the rents (including, without limitation, any prepaid rents), revenues, issues, earnings, products, royalties, income, cash proceeds, profits and other such benefits of the Land and/or the Improvements; and all rights of Trustor under all present and future Leases and rental agreements affecting the Land and/or the Improvements, including, but not limited to, any security deposits (collectively, the "Property Income");

(E) All existing and future leases (including oil and gas leases), subleases, licenses and other agreements for the use or occupancy of the Land and/or Improvements, whether written or oral, and any guarantees thereof, together with all extensions, modifications, assignments and renewals thereof, and all cash or other security deposited to secure performance by the tenants of their obligations thereunder, whether such cash or security is to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due prior to the expiration of the term thereof, and all of Trustor's claims and rights to the payment of damages arising from any rejection by a tenant of any lease under Debtor Relief Laws (individually, a "Lease" and collectively, the "Leases");

(F) All proceeds of any of the foregoing, including Insurance Proceeds, Condemnation Proceeds and all "proceeds" as defined in the Uniform Commercial Code in effect where the Real Property Collateral (as defined below) is located (as the same may be amended or restated from time to time, the "UCC"), and claims arising on account of any damage to or taking of the Land or Improvements and all causes of action and recoveries for any loss or diminution in value of the Land or Improvements;

(G) Any right, title and interest acquired by Trustor after the date of this Deed of Trust, in and to the Subject Pad, easement rights and other rights and interests, and all minerals, oil, gas and other hydrocarbon substances relating thereto, and all development rights, air rights,

water, water rights, water stock, parking, parking rights, wastewater capacity rights, if any, all other rights relating to sewage treatment capacity, water capacity and utilities relating to the Subject Pad or any Improvements thereon (as defined below), and general intangibles relating to the Subject Pad, its development or use, together with any and all of the property described in subsections (B) through (F) above with respect to any such Subject Pad (the Subject Pad and such other property herein collectively referred to as the "Subject Pad Real Property Collateral"). If fee simple title to the Subject Pad Real Property Collateral ever becomes vested in Trustor, such fee simple interest shall be encumbered by this Deed of Trust automatically upon the vesting thereof in Trustor in the same manner as if Trustor had fee simple title to such real property as of the date of execution hereof;

All of the Secured Property described above in subsections (A) through (G) is collectively referred to as the "Real Property Collateral." All Subject Pad Real Property Collateral shall be deemed to be part of the Land and all Subject Pad Real Property Collateral shall be deemed to be a part of the Real Property Collateral, in each case, from and after the acquisition thereof by Trustor from time to time.

Trustor also grants to Lender a security interest in and to all of Trustor's present and future estate, right, title and interest in and to the following:

(H) All existing and future goods, equipment and personal property, including all property and materials wherever located or stored that are now or in the future owned by Trustor or in which Trustor has or in the future acquires an interest, and all tools, utensils, maintenance supplies, vehicles, fuel, advertising and promotional material, blueprints, surveys, plans and other documents relating to the Land and/or Improvements or any business now or hereafter conducted thereon, and any and all fixtures, that are now or in the future owned by Trustor or in which Trustor has an interest, wherever located, and used in the operation or occupancy of the Land and/or Improvements or in any development of the Land and/or Improvements but that are not effectively made real property under this Deed of Trust, including, without limitation, heating and air-conditioning systems; elevators and escalators; facilities used to provide gas, water, irrigation systems, electricity, other utility and communication services, plumbing, refrigeration, or ventilation; sprinkler protection and other fire control systems; alarm systems; laundry, drying, and dishwashing systems; garbage disposal and waste removal systems; and fitness, recreation and other services and systems on the Land; and all window coverings, drapes and rods, curtain fixtures, shades, awnings, venetian blinds, light fixtures, screens, screen doors, storm doors and windows, stoves and ranges, microwaves, built-in furniture, shelving, partitions, carpeting, floor coverings, and other installations; all computers, computer related equipment, scanners, printers and other peripheral equipment, and software and software licenses; and the insurance proceeds and all other proceeds (including, without limitation, all "proceeds" as defined in the UCC) of any and all of the items and property listed above in this clause (H) and all warranties and equipment guarantees relating thereto;

(I) All general intangibles and payment intangibles and all rights to the payment of money; all accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties, or deposited by Trustor with third parties, relating to the construction, development, use, Sale, operation, management or enjoyment of the Land, or to any business or Improvement thereon, including any and all rights under the Property Management Agreement, any rights to payment of money,

accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits of any kind due to Trustor from any Governmental Authority; all governmental permits relating to the construction of any improvements on the Land; all names under or by which the Land or any of the Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all present and future trademarks relating solely to the Secured Property, choses and things in action, patents, patent applications, trade names, customer and tenant lists, mailing lists, purchase orders, copyrights, property tax refunds, other refunds (including but not limited to income tax refunds), prepaid expenses, rebates, tax and insurance escrow and impound accounts, if any, software, software licenses, letter of credit rights, investment property and good will in any way relating to the Land and/or the Improvements; all management agreements, service contracts or other contracts or agreements relating in any manner to the Land and/or Improvements or any part thereof; and all warranties relating thereto, covering or arising in respect of or in connection with the Land and/or the Improvements or any part thereof, and the insurance proceeds and all other proceeds (including, without limitation, all "proceeds" as defined in the UCC) of any and all of the items and property listed in this clause (I);

(J) Any right of real estate tax credit or reimbursement relating to the Secured Property (the "Tax Credit Amount") under that certain Participation Agreement by and between the Redevelopment Agency of the City of Orem, Utah, a community development and renewal agency and political subdivision of the State of Utah, and University Mall Shopping Center, L.C., a Utah limited liability company (as may be amended or modified from time to time, the "Tax Credit Agreement"), to the extent Borrower has rights thereto and such Tax Credit Amount is unencumbered.

(K) All water stock relating to the Land and/or Improvements or any part thereof or interest therein, all shares of stock or other evidence of ownership of any part of or interest in the Land and/or the Improvements that is owned by Trustor by itself or in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of or interest in the Land and/or the Improvements; and the insurance proceeds and all other proceeds (including, without limitation, all "proceeds" as defined in the UCC) of any and all of the items and property listed in this clause (K);

(L) All plans and specifications prepared for the construction or renovation of any and all Improvements on the Land, or any part thereof, and all studies, data and drawings related thereto, including, without limitation, all studies, data or reports relating to Hazardous Substances, if any, located on, in, under, at or about the Land, and 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 or renovation of Improvements on the Land, or any part thereof; all performance or completion bonds obtained by, at the request of, or on behalf of Trustor or Trustor's contractors or subcontractors in connection with the Land and/or the Improvements; all payment bonds obtained by, at the request of, or on behalf of Trustor or Trustor's contractors or subcontractors in connection with the Land and/or the Improvements, including, without limitation, all labor and material payment bonds; and all other guarantees of performance, completion and/or payment obtained by, at the request of, or on behalf of Trustor or Trustor's contractors or subcontractors in connection with the Land and/or the Improvements; and the

insurance proceeds and all other proceeds (including, without limitation, all "proceeds" as defined in the UCC) of any and all of the items and property listed in this clause (L);

(M) All permits (including without limitation construction, use and building permits), applications, licenses, approvals, entitlements, rights, certificates, agreements, and contracts to operate, occupy, manage, improve, use, enjoy, develop, subdivide, sell, survey or appraise the whole or any part of or interest in the Land and/or the Improvements;

(N) All use permits, rights under tentative, preliminary, or final maps or subdivision or condominium applications, and all other zoning, design, regulatory, and use approvals, entitlements and permits, including extension, renewal, and modification rights, relating to the construction, use, development, sale, operation, management, occupancy, or enjoyment of the whole or any part of or interest in the Real Property Collateral;

(O) All Property Income and all reservation agreements, sales agreements, option agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into respecting the Sale or transfer to any Person of the whole or any part of or interest in the Land and/or the Improvements; and the deposits, the insurance proceeds and all other proceeds (including, without limitation, all "proceeds" as defined in the UCC) of any and all of the items and property listed in this clause (O), and all funds held for the benefit of the Land and/or Improvements or any part thereof or interest therein or pursuant to any document executed in connection with this Deed of Trust;

(P) All environmental tests, studies, and reports, current and future environmental claims and rights of action, including, without limitation, tort claims and rights of indemnity and contribution under federal and state law against the owner or any prior owners of the Land and/or Improvements, neighboring owners, tenants, consultants, advisors, and other third parties, and contractual indemnity agreements;

(Q) All damages, royalties and revenue of every kind, nature and description whatsoever that Trustor may be entitled to receive from any Person owning or having or hereafter acquiring rights or interests in the Land and/or Improvements, including, without limitation, any right to the oil, gas or mineral rights and reservations of the Land and/or Improvements;

(R) All deposits made with or other security given to utility companies or service providers by Trustor with respect to the Land and/or Improvements or any part thereof or interest therein, and all advance payments of insurance premiums made by Trustor with respect thereto and all claims or demands with respect to insurance;

(S) Any negotiable certificates of deposit and/or funds of Trustor in Lender's possession, all impounds, reserves and accounts of every kind of Trustor's, and all impounds, reserves and accounts maintained by Trustor for or on behalf of Lender (including, without limitation, any Debt Service Reserve, CMA, Tax Reserve, and Re-Tenancing Reserve (as those terms are defined in the Loan Agreement), disbursement account, any impound account, and any account established for prepaid rents) and each deposit or other account of Trustor assigned to Lender pursuant to any agreement;



(T) All rights and interests as declarant or developer (or any substantially similar rights and interests, regardless of title or designation), if any, whether now possessed or hereafter acquired, under any declarations, covenants, restrictions, easements or similar agreements encumbering all or any portion of the Land;

(U) All Reacquisition Rights with respect to the Subject Pad and the improvements located thereon, whether now possessed or hereafter acquired;

(V) All substitutions, renewals, improvements, attachments, accessions, additions and replacements of or to any of the foregoing; and

(W) All collections, insurance proceeds and all other proceeds (including, without limitation, all "proceeds" as defined under the UCC) of any and all of the foregoing, and products of any and all of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any part thereof (pursuant to judgment, condemnation award or otherwise) and all documents, instruments, general intangibles, goods, equipment, inventory, chattel paper, monies, accounts, deposit accounts and other personal property that may arise from the sale or disposition of any of the foregoing, all guaranties of and security for any of the foregoing, and all books and records, including, without limitation, all computer records, computer tapes and electronic and electromagnetic representations and reproductions thereof, relating to any and all of the items and property listed in clauses (A) through (U) above.

All of the Secured Property described above in subsections (H) through (V) is collectively referred to as "Personal Property Collateral."

**TO HAVE AND TO HOLD** the Secured Property and the rights hereby granted to Trustee for the use and benefit of Lender, its successors and assigns, forever IN TRUST to secure the following (collectively, the "Secured Obligations"):

One: Payment by Trustor of an indebtedness in the Principal Sum equal to One Hundred Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$100,850,000.00) or so much thereof as is advanced pursuant to the Note and the Loan Agreement, with interest thereon, according to the terms of the Note and the Loan Agreement, and the payment, performance and discharge of each and every obligation, covenant and agreement of Trustor, contained in the Note, and payment by Trustor of any and all other Loan Indebtedness.

Two: Payment by Trustor of such additional sums with interest thereon as may hereafter be loaned by Lender to Trustor when evidenced by a promissory note or notes executed by Trustor and stating by its terms to be secured hereby (it being contemplated by Trustor and Lender that such future indebtedness may be incurred).

Three: Payment by Trustor of all real estate taxes, assessments and other Impositions levied against and all insurance premiums relating to the Secured Property and all disbursements made by Lender pursuant to the Loan Documents for the payment of any such taxes, assessments, Impositions and insurance premiums, and all fees, expenses or advances in connection with or relating to the Secured Property due hereunder.

**Four:** Performance and discharge of each and every obligation, covenant, and agreement of Trustor contained herein or in the other Loan Documents (as defined herein).

**Five:** Performance and discharge of each and every obligation, covenant and agreement of Trustor contained in any and all pledges, agreements, security agreements, supplemental agreements, or other instruments of security executed by Trustor as of even date herewith, or at any time subsequent to the date hereof, for the express purpose of further securing the Loan Indebtedness hereby secured, or any part thereof, or any further advancements or further or additional loans of any sums hereafter made by Lender to Trustor during the continuance of this Deed of Trust and expressly secured hereby, or for the purpose of supplementing or amending this Deed of Trust or any instrument expressly secured hereby.

The Loan Agreement, the Note, this Deed of Trust and the Closing Certification of even date herewith executed by Trustor in favor of Lender, and all other documents, certificates and instruments evidencing or securing the Secured Obligations executed or to be executed by Trustor (excluding specifically any Guaranty and the Environmental Indemnity) are referred to herein collectively as the "Loan Documents" and individually as a "Loan Document."

## **ARTICLE I**

### **COVENANTS OF TRUSTOR**

To protect the security of this Deed of Trust, Trustor represents, warrants and agrees as follows:

Section 1.1 Secured Obligations. Trustor shall pay the Loan Indebtedness and perform all other Secured Obligations in accordance with the respective terms of the Loan Documents.

Section 1.2 Perfection of Security Interest. By executing this Deed of Trust, Trustor authorizes the filing, at Trustor's sole cost and expense, of one or more financing statements pursuant to the UCC covering the Personal Property Collateral encumbered by this Deed of Trust. The foregoing authorization includes Trustor's irrevocable authorization for Lender at any time and from time to time to file any initial financing statements, continuation statements and amendments thereto that describe the personal property comprising a portion of the Secured Property (a) as "all assets of Trustor or words of similar effect, regardless of whether any particular portion of such personal property falls within the scope of the Uniform Commercial Code of the State or the jurisdiction where the initial financing statement or amendment is filed, or (b) as being of equal or lesser scope or with greater detail.

Section 1.3 Assignment of Property Income.

(a) All of the existing and future Property Income is hereby absolutely and irrevocably assigned to Lender to secure the Secured Obligations. This is a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Property Income is not contingent upon, and may be exercised without possession of, the Secured Property and with or without any commencement of foreclosure or appointment of receiver. Lender confers upon Trustor a revocable license ("License") to collect and retain the Property Income as it becomes due and payable, until the occurrence of an Event of Default. Upon the occurrence and during the continuance of an Event of Default, the License shall be automatically

revoked and Lender may collect and apply the Property Income pursuant to the terms hereof without notice and without taking possession of the Secured Property and with or without any commencement of foreclosure or appointment of receiver. All Property Income thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Lender whether or not commingled with other funds of Trustor. Trustor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Lender for the payment to Lender of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Lender. Collection of any Property Income by Lender shall not cure or waive any Event of Default or notice of default or Event of Default or invalidate any acts done pursuant to such notice. If and when no Event of Default exists, Lender shall re-confer the License upon Trustor until the occurrence of another Event of Default.

(b) Upon the occurrence and during the continuance of any Event of Default hereunder, Lender, or Lender's agent, or a receiver may, in Lender's sole and absolute discretion at any time, without notice to Trustor except as required by Applicable Law, thereafter collect and receive the Property Income itself or by an agent or receiver. Notwithstanding anything to the contrary contained herein, to the maximum extent permitted by Applicable Law, neither the foregoing assignment nor any action taken by Lender to collect any Property Income will (a) cause Lender to be a "mortgagee-in-possession" of the Secured Property or (b) cause Lender to be: (i) responsible or liable for the control, care, management or repair of the Secured Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (ii) responsible or liable for any waste committed on the Secured Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Secured Property; or for any negligence in the management, upkeep, repair or control of the Secured Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other Person; or (iii) responsible for or impose upon Lender any duty to produce Property Income. Lender shall not directly or indirectly be liable to Trustor or any other Person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder or the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Trustor arising under the Leases. Possession by a court-appointed receiver will not be considered possession by Lender. All Property Income collected by Lender or a receiver will be applied in the manner and to the extent required by Applicable Law, and unless otherwise required and specified by Applicable Law or herein, such sums will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Secured Property, and then to the payment of the Secured Obligations in whatever order Lender directs in Lender's sole and absolute discretion and without regard to the adequacy of its security.

(c) Trustor shall apply the Property Income (other than security deposits required by State law to be held by Trustor in a segregated account for so long as such security deposits are held in such segregated account) to the payment of, or maintain in operating accounts for the Secured Property in Trustor's name sufficient amounts to pay, amounts that are or will become due and payable with respect to the current debt service on the Loan Indebtedness, real estate taxes and assessments, operating expenses and trade payables for the

Secured Property and establishing and maintaining any reserves provided for in the Annual Budget.

(d) Upon the foreclosure of the Lien created by this Deed of Trust on the Secured Property pursuant to the provisions hereof, no Lease then existing and affecting all or any portion of the Secured Property shall be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any Lease unless Lender or such purchaser shall give written notice of such termination to such tenant or subtenant. If both the lessor's and lessee's estate under any Lease or any portion thereof which constitute a part of the Secured Property shall at any time become vested in one owner, this Deed of Trust and the Lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Lender so elects as evidenced by recording a written declaration so stating, and, unless and until Lender so elects, Lender shall continue to have and enjoy all of the rights and privileges of Lender hereunder as to the separate estates.

Section 1.4 Due on Sale; Due on Encumbrance. Any Transfer, Sale or Encumbrance (other than a Permitted Transfer, Permitted Sale and/or Permitted Encumbrance) without Lender's prior written consent in accordance with Schedule 5.4 of the Loan Agreement will constitute an Event of Default and Lender shall, at its option, declare the Loan immediately due and payable. Lender's consent to any particular Encumbrance, Transfer or Sale will not be deemed to be a waiver of Lender's right to require such consent to any future Sale or Encumbrance.

Section 1.5 Title, etc.

(a) Trustor has good and marketable indefeasible fee title in the Real Property Collateral subject to no Lien, charge, or Encumbrance, except for Title Policy Exceptions. This Deed of Trust is and will remain a valid and enforceable first priority Lien on the Real Property Collateral subject only to the Permitted Encumbrances. Trustor has good title to the Personal Property Collateral subject to no Lien, charge or Encumbrance, other than this Deed of Trust, the Financing Statements and Permitted Encumbrances. All easement, license, and use agreements encumbered hereby are and will remain valid, subsisting and in full force and effect, and Trustor is not in default thereunder and has fully performed the terms thereof required to be performed through the date hereof, and has no knowledge of any default thereunder by any other party. Trustor will forever warrant and defend: (A) its title to the Secured Property; (B) the rights of Lender under the Secured Property, this Deed of Trust, and the financing statements encumbering the Personal Property Collateral; and (C) the validity and priority of the Lien of this Deed of Trust on the Secured Property against the claims of all persons and parties except those having rights under the Title Policy Exceptions, to the extent of those rights.

(b) Trustor will, at its own expense, prosecute, appear in or defend any action or proceeding that materially and adversely affects Lender's security or the rights or powers of Lender, Trustee, or any of the Secured Property, and shall promptly notify Lender with respect to any such action or proceeding. If Trustor fails to diligently perform any of its material covenants or agreements contained in this Deed of Trust or in any instrument secured hereby, or if any action or proceeding of any kind (including any bankruptcy, insolvency, arrangement,

reorganization or other debtor relief proceeding) is commenced, or if there occurs any other event that might affect Lender's, Trustor's or Trustee's interest in the Secured Property, or Lender's right to enforce its security hereunder; then, Lender or Trustee may, without notice, which notice is hereby expressly waived, and at its option, make any appearances, disburse any sums, execute and deliver any documents in the name and on behalf of Borrower and take any actions as may be necessary or desirable to protect or enforce its interest in the Secured Property or its security hereunder, or to remedy the failure of Trustor to perform its covenants hereunder (without, however, waiving any default or Event of Default of Trustor). Trustor shall pay all out-of-pocket expenses of Lender and Trustee thus incurred (including fees and disbursements of counsel, including both in-house and outside counsel). Any sums disbursed by Lender or Trustee under this Section 1.5 will be additional Secured Obligations of Trustor secured by this Deed of Trust, will be payable on demand, and will bear interest at the Default Rate from the date advanced by Lender until paid in full. This subsection will not be construed to require Lender or Trustee to incur any expenses, make any appearances, or take any actions. If Lender is made a party to any litigation concerning this Deed of Trust, or the Secured Property, or the occupancy thereof by Trustor, then Trustor shall indemnify, defend with counsel selected by Lender, protect and hold harmless Lender, its directors, officers, employees, agents, assigns, and any successors to Lender's interest under the Note or this Deed of Trust from and against all liability, claims, demands, obligations, costs and expenses, by reason of such litigation, including attorneys' and experts' fees and expenses incurred by Lender in such litigation, whether or not any such litigation is prosecuted to judgment; provided, however, Trustor shall have no liability to a Person identified in this sentence as an indemnitee if the claim giving rise to the litigation resulting in liability, claims, demands, obligations, costs or expenses is determined by the final non-appealable judgment of a court of competent jurisdiction to be caused solely by the gross negligence or willful misconduct of such Person. If Lender commences an action against Trustor or appears in any bankruptcy, insolvency, reorganization or other proceeding for debtor relief to enforce any of the terms hereof, or because of the breach by Trustor of any of the terms hereof, or for the recovery of any sum secured hereby, Trustor shall pay to Lender the cost of Lender's attorneys' and experts' fees and expenses, and the right to such attorneys' and experts' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment.

(c) Nothing herein, and no authority given to Trustor to repair, rebuild, or restore the Secured Property, shall be deemed to constitute Trustor the agent of Lender for any purpose, or to create, either expressly or by implication, any Liens, claims, or rights on behalf of laborers, mechanics, materialmen, or other Lien holders, which could in any way be superior to the Lien or claim of Lender.

(d) Trustor shall maintain and preserve its existence, rights, and franchises material to its business, and all rights, power, and authority to perform its obligations under the Loan Documents.

#### Section 1.6 Security Agreement and Fixture Filing.

(a) This Deed of Trust constitutes a security agreement with respect to the Personal Property Collateral, and Lender shall have all of the rights and remedies of a secured party under the UCC and all other rights and remedies available at law, or in equity, with respect to the Personal Property Collateral. Trustor shall execute (if execution is required) and deliver

promptly on demand, and authorizes Lender and constitutes and appoints Lender as the attorney-in-fact of Trustor (such power being coupled with an interest and being irrevocable), to deliver, and, if appropriate, to file with the appropriate filing officer or office, such security agreements, financing statements, continuation statements, or other instruments as Lender may reasonably request or require in order to impose, perfect, or continue the perfection of the Lien or security interest created hereby.

(b) Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Trustor and shall include Lender's and Trustee's attorneys' fees and legal expenses (including those of in-house and outside counsel). Trustor, upon demand of Lender, following the occurrence of an Event of Default, shall make the Personal Property Collateral available to Lender at the Secured Property. Lender shall give Trustor at least ten (10) days prior written notice of the time and place of any public sale or other disposition of the Personal Property Collateral, or of the time on or after which any private sale or any other intended disposition thereof is to be made, and such notice shall be sent to Trustor as provided for the mailing of notices herein. It is hereby deemed that such notice shall be and is reasonable notice to Trustor.

(c) Portions of the Secured Property are goods which are or are to become fixtures relating to the Land and the Improvements; therefore, the filing of this Deed of Trust, in the real estate records of the county where the Secured Property is located, shall operate as a fixture filing, in accordance with the UCC, from the time of filing this Deed of Trust. Trustor is the record owner of the Land and Improvements. Information concerning the security interest herein granted may be obtained from either party at the address of such party set forth herein. For purposes of the security interest herein granted, the address of debtor (Trustor) is set forth in the first paragraph of this Deed of Trust and the address of the secured party (Lender) is set forth in the first paragraph of this Deed of Trust.

(d) Lender may elect to treat fixtures as either real property or personal property and proceed to exercise such rights and remedies applicable to the categorization so chosen. Lender may proceed against items of Real Property Collateral and items of Personal Property Collateral separately or together in any order whatsoever, without in any way affecting or waiving Lender's rights and remedies under the UCC, this Deed of Trust or the Note. It is the express understanding and intent of the parties hereto that, upon the occurrence of an Event of Default, Lender, in its sole discretion, may proceed in any sequence under Article 9 of the UCC as to any personal property or fixtures and separately as to its remedies with respect to real property and fixtures, or may proceed in any sequence as to some or all of the real property and some or all of the personal property and fixtures in accordance with its rights and remedies in respect of the real property, as specifically permitted under Section 9-604 of the UCC, and treat both the real property and the personal property or fixtures as one parcel of security. Lender may aggregate its rights in any real property, fixtures and/or personal property to create such parcels of security to be sold pursuant to the power of sale herein or by judicial foreclosure.

#### Section 1.7 Payments.

(a) All sums payable by Trustor hereunder, or secured hereby, shall be paid without notice (except as expressly provided in the Loan Documents), demand, counter-claim, setoff, deduction, or defense, and without abatement, suspension, deferment, diminution, or reduction. The obligations and liabilities of Trustor hereunder shall in no way be released,

discharged, or otherwise affected (except as expressly provided in the Loan Documents) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Secured Property; (ii) any restriction or prevention of or interference with any use of the Secured Property; (iii) any defect in title to or Encumbrance on the Secured Property, or any eviction from the Secured Property by title paramount or otherwise; (iv) any claim which Trustor has or might have against Lender; (v) any Event of Default, default or failure on the part of Lender to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. To the maximum extent permitted by Applicable Law, Trustor waives all rights now or hereafter conferred by statute, or otherwise, to any setoff, abatement, suspension, deferment, diminution, or reduction of the Secured Obligations.

(b) Trustor shall have no right to prepay any portion of the outstanding Loan Indebtedness, except on the terms set forth in the Note and the Loan Agreement. Trustor hereby expressly agrees that if a prepayment of any or all of the Note is made (i) prior to the time allowed under the Note or (ii) following any acceleration of the Maturity Date of the Note by Lender for any reason prior to the commencement of the Window Period, Trustor shall be obligated to pay, concurrently therewith, the Prepayment Premium or Enhanced Prepayment Premium (as defined in the Note), as applicable, due to Lender pursuant to the terms of the Note. By initialing this provision in the space provided below, Trustor hereby declares that Lender's agreement to make the Loan at the Contract Rate (as defined in the Note) and for the term set forth in the Note constitutes adequate consideration, given individual weight by the undersigned, for this waiver and agreement.

Section 1.8 Application of Collateral and Payments. Trustor irrevocably agrees that any payments received or credited by Lender, and any application of any Collateral (including, without limitation, the Secured Property) and any insurance proceeds or other proceeds from any Collateral, including, without limitation, "proceeds" as defined in the UCC (collectively, "Proceeds"), applied to any of the Loan Indebtedness, shall be deemed in all instances to have been applied first to that portion of the Loan Indebtedness not indemnified under the Environmental Indemnity or guaranteed under any Guaranty, indemnity or similar obligation or otherwise, and not included within any obligations of Trustor for which Trustor has personal liability under Section 7 of the Note (collectively, the "Non-Recourse Secured Obligations"). Only after such Non-Recourse Secured Obligations are fully paid and satisfied shall the Proceeds be deemed to have been applied to the Loan Indebtedness other than the Non-Recourse Secured Obligations, and then in the order and manner provided in Section 4.2 of the Note. Without in any way limiting the foregoing, upon the occurrence and during the continuance of any Event of Default, Lender shall be entitled to apply, and Trustor hereby irrevocably and unconditionally authorizes Lender to apply, any Proceeds in any manner and order as Lender may elect under the Loan Documents.

Section 1.9 Subject Pad. If Trustor acquires the fee estate in the Subject Pad then, simultaneously with Borrower's acquisition of the Subject Pad, the lien of this Deed of Trust shall automatically, without the necessity of any further conveyance, be spread to cover the Subject Pad and as so spread shall be prior to the lien of any mortgage, deed of trust or other lien placed on the Subject Pad after the date of this Deed of Trust. Promptly after Trustor's acquisition of the Subject Pad, Trustor, at its sole cost and expense, including payment of

Lender's documented attorneys' fees and out-of-pocket disbursements, shall execute and deliver all documents and instruments reasonably necessary to subject the Subject Pad to the lien of this Deed of Trust, and shall provide to Lender a title insurance policy (or date down and other endorsements to the existing policy) insuring the lien of this Deed of Trust as a first lien on the Subject Pad.

## **ARTICLE II**

### **EVENT OF DEFAULT**

Section 2.1 Events of Default. Trustor will be in default (each an "Event of Default") under this Deed of Trust upon the occurrence of any of the following events:

- (a) The occurrence of an Event of Default under the Loan Agreement or under any other Loan Document (as "Event of Default" is therein defined); or
- (b) Trustor fails to perform, observe or comply with any obligation, covenant or agreement under this Deed of Trust, and such failure continues beyond any notice or cure periods explicitly applicable herein to such covenant or agreement, if any, or if no notice or cure period is expressly provided, such failure continues beyond the cure period provided in Section 6.1(m) of the Loan Agreement.

## **ARTICLE III**

### **REMEDIES**

Section 3.1 Remedies upon Default. At any time after the occurrence and during the continuance of an Event of Default, Lender shall have the following rights and remedies:

- (a) To declare any or all Loan Indebtedness to be due and payable immediately;
- (b) To bring a court action to foreclose this Deed of Trust or to enforce its provisions or any provisions of the other Loan Documents, or to cause the Trustee to foreclose this Deed of Trust in accordance with Section 3.2. Trustor hereby acknowledges and agrees that upon foreclosure of the Secured Property, the security deposits relating to any and all Leases on the Secured Property shall be turned over by Trustor to the purchaser at such foreclosure sale;
- (c) To cause any or all of the Secured Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by Applicable Law;
- (d) To obtain a receiver appointed by a court of competent jurisdiction to manage the Secured Property and collect the income therefrom and Trustor hereby irrevocably and unconditionally waives any right to contest the appointment of such receiver and consents thereto. Such receiver may be appointed without notice and without regard to the solvency or insolvency of Trustor at the time of application for such receiver and without regard to the then value of the Secured Property. Lender or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Secured Property during such times (if any) when Trustor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and



operation of the Secured Property or such powers as may otherwise be granted by the court or under Applicable Law. The receiver may apply the net income in its hands in payment, in whole or in part, to the Loan Indebtedness;

(e) To the extent not prohibited by Applicable Law, Lender or its employees and agents, acting by themselves or through a court-appointed receiver, may enter upon, possess, manage, operate, dispose of, and contract to dispose of the Secured Property or any part thereof, and take any and all steps which may be desirable in Lender's judgment to complete any unfinished development or construction and to manage and operate the Secured Property, and to the extent allowed by Applicable Law, Lender may apply any rents, security deposits (subject to any limitations on the use of such security deposits under State law), issues, profits, royalties, income, earnings, revenues, proceeds and other benefits of the Secured Property collected by Lender to the Loan Indebtedness without in any way curing or waiving any Potential Default or Event of Default. In addition, to the extent not prohibited by Applicable Law, Lender or its employees or agents, acting by themselves or through a court-appointed receiver, may: (i) take custody of all accounts, including, without limitation, accounts into which security deposits have been deposited; (ii) negotiate with Governmental Authorities with respect to the Secured Property's environmental compliance and remedial measures; (iii) take any action necessary to enforce compliance with environmental provisions, including but not limited to spending Property Income collected by Lender to abate or remediate Hazardous Substances; (iv) make, terminate, enforce or modify leases of the Secured Property upon such terms and conditions as Lender reasonably deems proper; (v) contract for goods and services; (vi) hire agents, employees, and counsel; (vii) make repairs, alterations, and improvements to the Secured Property as necessary, in Lender's sole but reasonable judgment, to protect or enhance the security thereof; (viii) incur the risks and obligations ordinarily incurred by owners of property (without any personal obligation on the part of the receiver or Lender); and (ix) take any and all other actions which may be necessary or desirable to effect compliance with Trustor's obligations hereunder and under the Loan Documents. All sums realized by Lender under this subsection, less all costs and expenses actually incurred by it under this subsection, including attorneys' fees, and less such sums as Lender deems appropriate as a reserve to meet future expenses under this subsection, shall be applied to the Loan Indebtedness in such order as Lender shall determine. Application of such sums to the Loan Indebtedness and any other action taken by Lender under this subsection shall not cure or waive any Event of Default hereunder. Lender, or any employee or agent of Lender, or a receiver appointed by a court, may take any action or proceeding hereunder without regard to (A) the adequacy of the security for the Secured Obligations, (B) the existence of a declaration that the Loan Indebtedness has been declared immediately due and payable, or (C) the filing of a notice of default or Event of Default;

(f) Lender or its agents, acting by themselves or through a court-appointed receiver, may enter upon and/or take possession of the Secured Property or any part thereof and perform such acts and things as Lender deems necessary or desirable to inspect, investigate, assess, and protect the security hereof, including without limitation of any of its other rights: (i) to obtain a court order to enforce Lender's right to enter and inspect the Secured Property, to which the decision of Lender as to whether there exists Release (as defined in the Environmental Indemnity) or threatened Release of Hazardous Substance onto the Secured Property shall be deemed reasonable and conclusive as between the parties hereto; and (ii) to have a receiver appointed to enforce Lender's right to enter and inspect the Secured Property, in each case without releasing Trustor from any obligation hereunder. All costs and expenses actually

incurred by Lender with respect to the audits, tests, inspections, and examinations which Lender or its agents or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, shall be paid by Trustor promptly upon written demand;

(g) To seek a judgment that Trustor has breached its covenants, representations and/or warranties concerning Hazardous Substances set forth in the Environmental Indemnity or any other covenants, representations, or warranties that are deemed to be "environmental provisions", by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract, whether commenced prior to or after foreclosure of the Secured Property, and to seek the recovery of any and all Environmental Costs, it being presumed between Lender and Trustor that all such Environmental Costs incurred or advanced by Lender relating to the cleanup, remediation, or other response action of or to the Secured Property were made by Lender in good faith. All Environmental Costs incurred by Lender under this subsection (including without limitation court costs, consultant fees and attorneys' fees, whether incurred in litigation or not and whether before or after judgment) shall bear interest at the Default Rate from the date advanced by Lender until paid in full. Lender shall be entitled to bid, at the sale of the Secured Property held under subsection (c) above, the amount of such costs, expenses and interest in addition to the amount of the other obligations hereby secured, as a credit bid. Trustor acknowledges and agrees that notwithstanding any terms or provision contained herein or in the Loan Documents, the Environmental Costs shall be exceptions to any nonrecourse or exculpatory provision of the Loan Documents (as provided in Section 7 of the Note and the Environmental Indemnity), and Trustor shall be fully and personally liable for the Environmental Costs hereunder, and such liability shall not be limited to the original principal amount of the obligations secured by this Deed of Trust, and Trustor's obligations shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance, or any other transfer of the Secured Property or this Deed of Trust. For the purposes of any action brought under this subsection, Trustor hereby waives the defense of laches and any applicable statute of limitations;

(h) To waive its Lien against the Secured Property or any portion thereof, whether fixtures or personal property, to the extent such property is found to be environmentally impaired and to exercise any and all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs. As between Lender and Trustor, Trustor shall have the burden of proving that Trustor or any related party (or any affiliate or agent of Trustor or any related party) was not in any way negligent in permitting the Release or threatened Release of the Hazardous Substance;

(i) To exercise any other right or remedy available under law or in equity;

(j) To cause any of the Personal Property Collateral to be sold at any one or more public or private sales as permitted by Applicable Law, and Lender shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under Applicable Law. Any such disposition may be conducted by an employee or agent of Lender or Trustee. Any Person, including Lender, shall be eligible to purchase any part or all of such property at any such disposition;

(k) To exercise any and all other remedies available to a secured party under the UCC; or

(l) To exercise rights with respect to any reserves or any amounts held by Lender in which Trustor has an interest, including the right to apply the same to the Loan Indebtedness in any order as Lender may elect, and to draw on any letter of credit, as provided in such letter of credit and/or in the Loan Agreement.

**Section 3.2 Foreclosure by Power of Sale.**

(a) **Foreclosure.** For any sale under the power of sale granted by this Deed of Trust and to the extent required by Applicable Law, Trustee must record and give all notices required by law and then, upon the expiration of such time as is required by law, may sell the Secured Property upon any terms and conditions specified by Lender and permitted by Applicable Law. Trustee may postpone any sale by public announcement at the time and place noticed for the sale or in any other manner permitted by law. If the Secured Property consists of several lots or parcels, Lender in its sole and absolute discretion may designate their order of sale or may elect to sell all of them as an entirety, whether or not Trustor objects. Except for Trustee, any Person, including Lender, may purchase at any sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a deed or deeds conveying the Secured Property sold, and the recitals in the trustee's deed or deeds of any facts affecting the regularity or validity of the sale will be conclusive against all Persons.

(b) **Possession After Foreclosure.** To the extent permitted by Applicable Law, if the Liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Trustor or Trustor's successors shall hold possession of such property or any part thereof subsequent to foreclosure, Trustor and Trustor's successors shall be considered as tenants at sufferance of the purchaser at the foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Secured Property so occupied and sold to such purchaser), and anyone occupying such portion of the Secured Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

**Section 3.3 Continuance of Events of Default.** Notwithstanding anything to the contrary contained in this Deed of Trust, the Loan Agreement or any other Loan Document, the Environmental Indemnity or any Guaranty, (a) if an Event of Default (as defined herein, in any other Loan Document, the Environmental Indemnity or any Guaranty) occurs (i) it shall be deemed to continue unless and until Lender (in its sole and absolute discretion) in writing has waived the Event of Default, and (ii) unless Lender (in its sole and absolute discretion) has agreed in writing to permit Trustor to do so, neither Trustor nor any other Person shall have any right to cure such Event of Default; and (b) if Lender waives an Event of Default in writing or accepts in writing a cure by Trustor of an Event of Default, following such written waiver or cure, such Event of Default shall cease to exist and shall no longer continue. Lender shall have no obligation to waive any Event of Default or allow Trustor or any other Person to cure any Event of Default.

Section 3.4 Application of Sale Proceeds. Subject to the provisions of Section 1.8 of this Deed of Trust, the proceeds of any sale under this Deed of Trust will be applied in the following manner, unless otherwise required by law:

*FIRST*: Payment of costs and expenses of the sale, including but not limited to, Trustee's fees not to exceed five percent (5%) of the sale price of the Secured Property, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender, together with interest thereon at the Default Rate, from the date expended until paid.

*SECOND*: Other than those sums expended as a result of any environmental provision in any Loan Documents, payment of all sums expended by Lender under the terms of this Deed of Trust and not yet repaid, together with interest thereon at the Default Rate until paid.

*THIRD*: Payment of the Loan Indebtedness and other Secured Obligations secured by this Deed of Trust in any order that Lender may choose in its sole and absolute discretion.

*FOURTH*: The remainder, if any, as provided by Applicable Law.

Section 3.5 Marshalling. Trustor waives all rights to direct the order in which any of the Secured Property or any other security for the Secured Obligations will be sold in the event of any sale under this Article III, and also any right to have any of the Secured Property or any other security for the Secured Obligations marshaled upon any sale.

Section 3.6 Remedies Not Exclusive. To the extent permitted by Applicable Law, Trustee and/or Lender shall be entitled to enforce payment of the Loan Indebtedness and performance of any Secured Obligations, and to exercise all rights and powers under this Deed of Trust or any other Loan Document or under any other agreement or any laws now or hereafter in force, without regard to whether or not some or all of the Secured Obligations may now or hereafter be otherwise secured by mortgage, deed of trust, pledge, Lien, assignment, or otherwise. Acceptance of this Deed of Trust or its enforcement, whether by court action or pursuant to the power of sale or any other powers or rights contained herein, shall not prejudice, or in any manner affect, Trustee's or Lender's right to realize upon or enforce any other security now or hereafter held by Trustee or Lender. Trustee and/or Lender shall be entitled to enforce this Deed of Trust, and any other security now or hereafter held by Lender or Trustee, in such order and manner as Lender may in its absolute discretion determine, except as otherwise required by law. No remedy in this Deed of Trust conferred upon or reserved to Trustee or Lender is intended to be exclusive of any other remedy herein, or by law provided or permitted. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. Each time Trustor fails or refuses to make payment, or to perform, as required by the Loan Documents, Lender shall have the right, exercisable in Lender's sole discretion, to cure all or any part of such failure or refusal upon such terms as Lender shall, in its sole discretion, deem necessary or advisable. Any amounts advanced by Lender pursuant to this provision shall be added to, and deemed a part of, the Loan Indebtedness, be secured in the same manner as the Note is secured, and be payable to Lender promptly on demand, with interest at the Default Rate from the date of the advance until paid.

Section 3.7 Recourse. Reference is made to Section 7 of the Note, which is incorporated herein by reference, for limitations on the personal liability of Trustor with respect to the Loan Indebtedness.

#### **ARTICLE IV MISCELLANEOUS**

Section 4.1 Severability. If any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable, such invalidity, voidness or unenforceability shall not impair, diminish, void, invalidate or affect in any way any other terms, provisions, covenants and conditions hereof or any applications hereof, all of which shall continue in full force and effect; provided however, that if any term, provision, covenant or condition hereof or any application thereof should be held by a court of competent jurisdiction to be invalid, void or unenforceable and such term, provision, covenant or condition relates to the payment of any monetary sum, then Lender may, at its option, declare the Secured Obligations immediately due and payable.

Section 4.2 Lender Statements; Processing Fees. Trustor agrees to pay Lender a reasonable charge, not to exceed the maximum allowed by law, for giving any statement of the status of the Secured Obligations. In addition, Trustor shall pay Lender for any attorneys' fees incurred by Lender in connection with, considering, negotiating, preparing, and providing, at Trustor's request: (a) a waiver of any provision of, or amendment or modification to, any of the Loan Documents; or (b) any approval or other document requested by Trustor (other than for draw requests or change orders as contemplated in the Loan Agreement). Such charges shall be payable, whether or not Lender complies with Trustor's request.

Section 4.3 Notices. Any notice, demand or request required hereunder shall be given in accordance with Section 8.6 of the Loan Agreement.

Section 4.4 Release, Modification. Without affecting Trustor's liability for the payment of the Secured Obligations, Lender may from time to time, without notice: (a) release any Person liable for the payment of the Secured Obligations; (b) extend or modify the Secured Obligations; (c) accept additional real or personal property of any kind as security, or alter, substitute, or release any of the Secured Property; or (d) consent or cause Trustee to consent to any map or plat of the Real Property Collateral, release any part of the Real Property Collateral, join in granting any easement or creating any restriction on the Real Property Collateral, or join in any subordination or other agreement affecting this Deed of Trust.

Section 4.5 Statutes of Limitations. Trustor waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Deed of Trust, collect any Loan Indebtedness or enforce the Secured Obligations to the fullest extent permitted by Applicable Law.

Section 4.6 Time is of the Essence. Time shall be of the essence in the payment and performance by Trustor of the obligations of Trustor under the Note, the Loan Agreement, this Deed of Trust and any other Loan Document.

Section 4.7 Further Assurances.

(a) Trustor will, at Trustor's sole cost and expense and at the reasonable request of Lender, (i) promptly correct any defect or error which may be discovered in the contents of the Note, the Loan Agreement, this Deed of Trust or any other Loan Document or in the execution, acknowledgment or recordation thereof, and (ii) promptly do, execute, acknowledge and deliver, any and all such further acts, deeds, conveyances, mortgages, trust deeds, assignments, estoppel certificates, security agreements, financing statements and continuations thereof, notices of assignment and of security interest, transfers, certificates, assurances and other instruments as Lender may reasonably require from time to time in order to carry out more effectively the purposes of this Deed of Trust, to subject to the Lien and security interest hereby created any of Trustor's properties, rights or interests covered or now or hereafter intended to be covered hereby, to perfect and maintain such Lien and security interest, and to better assure, convey, grant, assign, transfer and confirm unto Lender the rights granted or now or hereafter intended to be granted to Lender hereunder or under any other instrument executed in connection with this Deed of Trust or which Trustor may be or become bound to convey or assign to Lender in order to carry out the intention or facilitate the performance of the provisions of this Deed of Trust.

(b) Lender will, at Trustor's sole cost and expense and at the reasonable request of Trustor, (i) promptly correct any defect or error which may be discovered in the contents of the Note, the Loan Agreement, this Deed of Trust or any other Loan Document or in the execution, acknowledgment or recordation thereof, and (ii) promptly do, execute, acknowledge and deliver, any and all such further acts, deeds or other documentation in order to carry out the intention or facilitate the performance of the provisions of this Deed of Trust.

Section 4.8 Trustor/Lender Defined. The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Secured Property who assume the Loan with Lender's prior written consent. The term "Lender" includes the original Lender and also any future owner or holder, including the pledgees and participants, of the Note or any interest therein. If more than one Person constitutes, collectively, Trustor, all of the provisions with reference to Trustor shall be construed to refer to each such Person, jointly and severally.

Section 4.9 Number and Gender. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender.

Section 4.10 Captions. The captions and headings of the articles and sections of this Deed of Trust are for convenience only and are not to be used in construing this Deed of Trust.

Section 4.11 Successors and Assigns. This Deed of Trust will bind and benefit the legal representatives, successors, and assigns of Trustor and Lender. This provision does not alter, limit, or restrict the effect of the transfer restrictions contained herein or in the Loan Agreement.

Section 4.12 Consents and Approvals. No waiver of any Event of Default, or breach by Trustor under the Loan Documents, shall be implied from any omission by Lender to take action on account of such Event of Default or breach, if such Event of Default or breach persists or is repeated. No express waiver shall affect any Event of Default or breach, other than the Event of Default or breach specified in the waiver. Any such waiver shall be operative only for the time, and to the extent, stated in a writing executed by an authorized officer of Lender. Waivers of any breach of any covenant, term, or condition contained herein shall not be construed as a waiver of

any subsequent breach of the same covenant, term, or condition. Lender's consent to or approval of any act or omission by Trustor, requiring further consent or approval, shall not be deemed to waive, or render unnecessary, the consent to or approval of any subsequent and/or similar act.

**Section 4.13 Recordation and Re-Recordation of Deed of Trust.** Trustor will, at the reasonable request of Lender, promptly record and re-record, file and refile and register and re-register this Deed of Trust, any financing or continuation statements and every other instrument in addition or supplemental to any thereof that shall be required by any present or future law in order to perfect and maintain the validity, effectiveness and priority of this Deed of Trust and the Lien and security interest intended to be created hereby, or to subject after acquired property of Trustor to such Lien and security interest, in such manner and places and within such times as may be reasonably necessary to accomplish such purposes and to preserve and protect the rights and remedies of Lender. Trustor will furnish to Lender evidence reasonably satisfactory to Lender of every such recording, filing or registration. Lender may file copies or reproductions of this instrument at any time and from time to time at Lender's option without further authorization from Trustor.

**Section 4.14 Validity, Perfection and Enforceability.** This Deed of Trust, when duly recorded and when financing statements are duly filed in the appropriate public records, will create a valid, perfected and enforceable Lien upon and security interest in all the Secured Property, and there will be no defenses or offsets to this Deed of Trust or to the Secured Obligations.

**Section 4.15 Language of Agreement.** The language of this Deed of Trust, the Note, the Loan Agreement and the other Loan Documents and the Environmental Indemnity shall be construed as a whole according to its fair meaning, and not strictly for or against any party.

**Section 4.16 Integrated Contract.** This Deed of Trust, the other Loan Documents and the Environmental Indemnity set forth the entire understanding between Trustor and Lender about the matters set forth herein and therein and supersede all oral negotiations and prior writings in respect to the subject matter hereof.

**Section 4.17 Waivers; Subrogation.**

(a) **Waivers.** To the fullest extent permitted by Applicable Law, Trustor waives the benefit of all laws now existing or that hereafter may be enacted providing for (a) any appraisalment before sale of the Secured Property or (b) in any way extending the time for the enforcement or the collection of the Note or the Loan Indebtedness evidenced thereby, or creating or extending a period of redemption from any sale made in collecting the Loan Indebtedness. To the fullest extent permitted by Applicable Law, Trustor shall not: (i) at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption; and (ii) Trustor, for Trustor, Trustor's representatives, successors, and assigns, and for any and all Persons ever claiming any interest in the Secured Property, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshalling in the event of foreclosure of the Liens hereby created. If any law referred to in this Section and now in force, of which Trustor, Trustor's representatives, successors and assigns or other Person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be

deemed to preclude the application of this Section. Trustor expressly waives and relinquishes any and all rights, defenses and remedies that Trustor may have or be able to assert by reason of laws or decisions of the State pertaining to the rights, defenses and remedies of sureties. Trustor hereby expressly waives diligence, demand, presentment, protest and notice of every kind and nature whatsoever (unless as otherwise required under this Deed of Trust), and waives any right to require Lender to enforce any remedy against any guarantor, endorser or other Person whatsoever prior to the exercise of its rights and remedies hereunder or otherwise. Trustor waives any right to require Lender to: (x) proceed or exhaust any Collateral security given or held by Lender in connection with the Loan Indebtedness; (ii) give notice of the terms, time and place of any public or private sale of any real or personal property security for the Loan Indebtedness or other guaranty of the Loan Indebtedness; or (iii) pursue any other remedy in Lender's power whatsoever.

(b) Subrogation. Until Indefeasible Payment and Performance in Full, Trustor: (i) shall not have any right of subrogation to any of the rights of Lender against any guarantor, maker or endorser; (ii) waives any right to enforce any remedy which Lender now has or may hereafter have against any other guarantor, maker or endorser; (iii) waives any benefit of, and any other right to participate in, any collateral security for the Loan Indebtedness or any guaranty of the Loan Indebtedness now or hereafter held by Lender.

Section 4.18 References to Loan Documents. All references in this Deed of Trust, any other Loan Documents, any Guaranty and/or the Environmental Indemnity shall include and be deemed to include a reference to any and all amendments, modifications, substitutions, replacements, rearrangements, restatements, extensions, and renewals thereof and thereto, executed by Lender.

Section 4.19 Waiver of Jury Trial. Section 8.12 of the Loan Agreement is hereby incorporated by reference.

Section 4.20 Costs of Enforcement. Promptly on demand, Trustor shall pay or reimburse Lender for all Costs of Enforcement.

Section 4.21 Usury. Section 8.8 of the Loan Agreement is hereby incorporated by reference in this Deed of Trust.

Section 4.22 Entire Agreement; Amendment. THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS AND THE ENVIRONMENTAL INDEMNITY EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. No amendment or modification of this Deed of Trust shall be effective unless in writing signed by the party charged therewith. The provisions hereof and the other Loan Documents may be amended or waived only by an instrument in writing signed by Trustor and Lender.



Section 4.23 Local Law Provisions. The terms and provisions set forth in Appendix A attached hereto are incorporated by reference as though fully set forth herein. In the event of any conflict between the terms and provisions of the body of this Deed of Trust and the terms and provisions of Appendix A, the latter shall control.

[SIGNATURE PAGE FOLLOWS]

Handwritten signature or initials in black ink, located in the bottom right corner of the page.

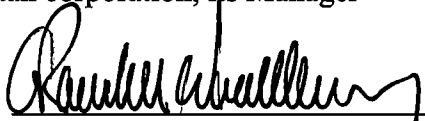
Executed as of the day and year first above written.

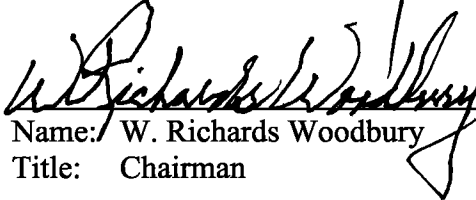
**TRUSTOR:**

**UNIVERSITY PLACE SPE L.L.C.,**  
a Utah limited liability company

By: **WOODBURY MANAGEMENT  
COMPANY, L.C.,**  
a Utah limited liability company, its Manager

By: **WOODBURY CORPORATION,**  
a Utah corporation, its Manager

By:   
Name: O. Randall Woodbury  
Title: President

By:   
Name: W. Richards Woodbury  
Title: Chairman

ACKNOWLEDGMENT

STATE OF UTAH )  
 )  
 ) : ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of December 2019, by O. Randall Woodbury, in his capacity as President of Woodbury Corporation, a Utah corporation, in its capacity as Manager of Woodbury Management Company, L.C., a Utah limited liability company, in its capacity as Manager of University Place SPE L.L.C., a Utah limited liability company.



[Signature]  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

STATE OF UTAH )  
 )  
 ) : ss.  
COUNTY OF Salt Lake )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of December, 2019, by W. Richards Woodbury, in his capacity as Chairman of Woodbury Corporation, a Utah corporation, in its capacity as Manager of Woodbury Management Company, L.C., a Utah limited liability company, in its capacity as Manager of University Place SPE L.L.C., a Utah limited liability company.



[Signature]  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

[Handwritten initials]

**Exhibit A**

**LEGAL DESCRIPTION**

**Parcel 1:**

Lots 1, 2, 3, 3D, 3E, 4, 5B, 6A, 7, 8C, 8D, 9, 10, 12, 20, 21, 22, 24, and 25, University Place Subdivision Plat 'B', according to the Official Plat thereof, recorded December 12, 2019, as Entry No. 131493:2019, Map Filing No. 16877, in the Office of the Utah County Recorder, State of Utah.

**Parcel 2:**

Non-exclusive easements for ingress and egress as set forth in that certain Cross Access Easement Agreement dated December ~~18~~<sup>14</sup>, 2019 between University Place SPE L.L.C., a Utah limited liability company and University Mall Shopping Center, L.C., a Utah limited liability company, said instrument recorded December ~~18~~, 2019 as Entry No. 134144:2019, over the following described property, to wit:

Lots 23, 26, 30 and 33, University Place Subdivision Plat 'B', according to the Official Plat thereof, recorded December 12, 2019, as Entry No. 131493:2019, Map Filing No. 16877, in the Office of the Utah County Recorder, State of Utah.

**Parcel 3:**

Non-exclusive easement for parking as set forth in that certain Parking Easement Agreement dated December ~~18~~<sup>10</sup>, 2019 between University Place SPE L.L.C., a Utah limited liability company and University Mall Shopping Center, L.C., a Utah limited liability company, said instrument recorded December ~~18~~, 2019 as Entry No. 134146:2019, over the following described property, to wit:

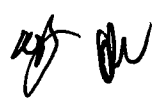
Lots 30 and 33, University Place Subdivision Plat 'B', according to the Official Plat thereof, recorded December 12, 2019, as Entry No. 131493:2019, Map Filing No. 16877, in the Office of the Utah County Recorder, State of Utah.

**Parcel 4:**

Non-exclusive easement as set forth in that certain Cross Easement Agreement dated May 30, 2008 and the terms and provisions thereof, between University Mall Shopping Center L.C., a Utah limited liability company and Utah Transit Authority, a public transit district (UTA) and KC PROPCO, LLC, a Delaware limited liability company, recorded March 5, 2009 as Entry No. 23588:2009.

Parcel 5:

Lots 202 and 204, University Mall Plat A – Lot 201-205 Subdivision, according to the official plat thereof, recorded November 29, 2017 as Entry No. 117896:2017 and Map Filing No. 15792, in the office of the Utah County Recorder.



Appendix A**LOCAL LAW PROVISIONS****I. ACCELERATION; REMEDIES.**

(a) If an Event of Default occurs, Lender, at Lender's option, may declare the Secured Obligations to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by Applicable Law or provided in this Deed of Trust or in the other Loan Documents. Trustor acknowledges that the power of sale granted in this Deed of Trust may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees (including but not limited to appellate litigation), costs of documentary evidence, abstracts and title reports.

(b) If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Secured Property to be sold and shall record such notice in each county in which the Secured Property is located. Lender or Trustee shall mail notice of default in the manner provided by the laws of Utah to Trustor and to such other persons as the laws of Utah prescribe. Trustee shall give public notice of sale and shall sell the Secured Property according to the laws of Utah. Trustee may sell the Secured Property at the time and place and under the terms designated in the notice of sale in one or more parcels. Trustee may postpone sale of all or any part of the Secured Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Secured Property at any sale. Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Secured Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein.

**II. RECONVEYANCE.**

Upon payment of the Secured Obligations, Lender shall request Trustee to reconvey the Secured Property and shall surrender this Deed of Trust and the Note to Trustee. Trustee shall reconvey the Secured Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Secured Property.

**III. SUBSTITUTE TRUSTEE.**

Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Deed of Trust by filing a substitution of trustee in accordance with Utah law. Without conveyance of the Secured Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by Applicable Law.

IV. REQUEST FOR NOTICES.

Trustor requests that copies of the notice of default and notice of sale be sent to Trustor at Trustor's address stated in the first paragraph on page 1 of this Deed of Trust.

V. INTEGRATION CLAUSE.

This Deed of Trust and the Loan Documents represent the final expression of the agreement between Lender and Trustor and may not be contradicted by evidence of any alleged oral agreement, whether prior, contemporaneous or subsequent. There are no unwritten oral agreements between the parties to this Deed of Trust.

