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ADAM GARDINER
Recorder, Salt Lake County, UT
FIRST AMERICAN NCS
BY: eCASH, DEPUTY - EF 39 P.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

BOFI FEDERAL BANK
4350 La Jolla Village Dr., Suite 140
Mail Stop 860
San Diego, CA 92122
Attn: Loan Servicing
Loan No. 900025453

Tax Parcel(s) / APN: 08-36-404-020-000

Esc: 885523-JH

(Space Above For Recorder's Use)

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

FOUNTAINHEAD DEVELOPMENT 2.0, LLC, a California limited
liability company (Trustor)

to

OLD REPUBLIC TITLE INSURANCE COMPANY
(Trustee)

in favor of

BOFI FEDERAL BANK
(Lender)

DATED: February 1, 2018

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

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

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY 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, LENDER IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

The parties to this DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust"), dated as of **February 1, 2018**, are **FOUNTAINHEAD DEVELOPMENT 2.0, LLC**, a California limited liability company ("Trustor"), having its principal place of business at 1401 Quail Street #100, Newport Beach, CA 92660, **OLD REPUBLIC TITLE INSURANCE COMPANY** as trustee ("Trustee"), and **BOFI FEDERAL BANK**, a federally chartered savings bank ("Lender"), having its principal place of business at 4350 La Jolla Village Drive, Suite 140, San Diego, California, 92122.

RECITALS

A. Lender is making a loan to Trustor (the "Loan"), which is evidenced by a Promissory Note Secured By Deed of Trust (the "Note") in the amount of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$ 1,750,000.00)**, executed by Trustor in favor of Lender, dated the same date as this Deed of Trust, payable to the order of Lender.

B. The loan documents include this Deed of Trust, the Note and the other documents described in the Note as Loan Documents (the "**Loan Documents**").

ARTICLE 1

DEED OF TRUST

1.1 **Grant.** For the purposes of and upon the terms and conditions of this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Lender, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may hereafter acquire in, to, under or derived from any or all of the following:

(a) That real property (the "**Land**") located in the **County of Salt Lake, State of Utah**, and more particularly described on Exhibit A attached hereto;

- (b) All appurtenances, easements, rights of way, water and Water Rights (as hereinafter defined), pumps, pipes, flumes and ditches and ditch rights, water stock, ditch and/or reservoir stock or interests, royalties, development rights and credits, air rights, minerals, oil rights, and gas rights, now or later used or useful in connection with, appurtenant to or related to the Land;
- (c) All buildings, structures, facilities, other improvements and fixtures now or hereafter located on the Land;
- (d) All apparatus, equipment, machinery and appliances and all accessions thereto and renewals and replacements thereof and substitutions therefor used in the operation or occupancy of the Land, it being intended by the parties that all such items shall be conclusively considered to be a part of the Land, whether or not attached or affixed to the Land;
- (e) All land lying in the right-of-way of any street, road, avenue, alley or right-of-way opened, proposed or vacated, and all sidewalks, strips and gores of land adjacent to or used in connection with the Land;
- (f) All additions and accretions to the property described above;
- (g) All licenses, authorizations, certificates, variances, consents, approvals and other permits now or hereafter pertaining to the Land and all estate, right, title and interest of Trustor in, to, under or derived from all trade names or business names relating to the Land or the present or future development, construction, operation or use of the Land;
- (h) The Collateral (as defined herein); and
- (i) All proceeds, royalties, payments, net profit interests and other interests of any of the foregoing.

All of the property described above is hereinafter collectively defined as the "Property". The listing of specific rights or property shall not be interpreted as a limitation of general terms.

ARTICLE 2

OBLIGATIONS SECURED

2.1 Obligations Secured. Trustor makes the foregoing grant and assignment for the purpose of securing the following obligations (the "Secured Obligations"):

- (a) Full and punctual payment to Lender of all sums at any time owing under the Note;
- (b) Payment and performance of all covenants and obligations of Trustor under this Deed of Trust including, without limitation, indemnification obligations and advances made to protect the Property;
- (c) Payment and performance of all additional covenants and obligations of Trustor under the Loan Documents except for the Trustor's covenants and obligations under any "Environmental Indemnity Agreement," executed in favor of Lender, as of the date hereof (including any riders thereto). For the avoidance of doubt, the Secured Obligations, notwithstanding anything to the contrary contained herein, shall not include, obligations or covenants, in each case, pursuant to: (i) any guarantee of the Loan (it being understood that the guarantor(s) under such Guarantee shall not be the Trustor); (ii) any environmental indemnity regarding the Property executed by, in each case, the Trustor and/or any guarantor/additional indemnitor; and (iii) any similar Guarantee or indemnity, including any rider(s) thereto, by which a person guarantees or otherwise acts as a surety regarding the Trustor's obligations under the Loan Documents. Without limiting the generality

of the foregoing provisions of this Section 2.1(c) and for the further avoidance of doubt, the Secured Obligations do not include, in each case, (x) any "Guarantee" of the Loan executed as of the date hereof, in favor of Lender, and any successor thereto and (y) any "Environmental Indemnity Agreement" (including any rider(s) thereto) executed as of the date hereof, in favor of Lender, and any successor thereto (it being understood that such Guarantee/Guaranties and the Environmental Indemnity Agreement, notwithstanding anything to the contrary contained herein, are not secured by this Deed of Trust);

(d) Payment and performance of all covenants and obligations, if any, which any rider attached as an exhibit to this Deed of Trust recites are secured hereby;

(e) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when the obligation is evidenced by a writing that recites that it is secured by this Deed of Trust; however, any obligation secured by this Deed of Trust shall not be construed to be part of any "Guarantee" or "Environmental Indemnity Agreement" (as such terms are used in Section 2.1(c) hereof, including any rider(s) or successor documents thereto);

(f) All interest and charges on all obligations secured hereby including, without limitation, prepayment charges, late charges and loan fees; and

(g) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

2.2 Obligations. The term "**obligations**" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges, reimbursements for expenses, and loan fees at any time accruing or assessed on any of the Secured Obligations.

2.3 Incorporation. All terms and conditions of the documents that evidence any of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice that the rate of interest on one or more Secured Obligations may vary from time to time. As used in this Deed of Trust, "person" or "persons" shall refer to both a natural person and a legal person.

ARTICLE 3

ASSIGNMENT OF RENTS AND LEASES

3.1 Assignment. Trustor absolutely, irrevocably, and unconditionally grants, transfers and assigns to Lender all of Trustor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Property or any portion thereof, whether such leases, licenses and agreements are now existing or entered into after the date hereof (the "**Leases**"); and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (the "**Payments**"). The term "**Leases**" shall also include all guaranties of and security for the tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Lender's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Property.

3.2 Grant of License. Lender confers upon Trustor a revocable license (the "License") to collect and retain the Payments as they become due and payable, until the occurrence of an Event of Default (as hereinafter defined). Upon an Event of Default, the License shall be automatically revoked and Lender may collect and apply the Payments pursuant to the terms hereof without notice and without taking possession of the Property. All Payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Lender. 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. Lender may apply, in its sole discretion, any Payments so collected by Lender against any Secured Obligation or any other obligation of Trustor, Trustor or any other person or entity, under any document or instrument related to or executed in connection with the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Lender shall not cure or waive any Event of Default or notice of an Event of Default or invalidate any acts done pursuant to such notice.

3.3 Effect of Assignment. The foregoing irrevocable assignment shall not cause Lender to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Lender any duty to produce rents or profits. Lender shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (e) the exercise or failure to exercise any of the rights, remedies or powers granted to Lender hereunder; or (f) the failure or refusal of Lender to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

3.4 Covenants.

- (a) All Leases. Trustor shall, at Trustor's sole cost and expense:
- (i) perform all obligations of the landlord under the Leases and use reasonable efforts to enforce performance by the tenants of all obligations of the tenants under the Leases;
 - (ii) use reasonable efforts to keep the Property leased at all times to tenants which Trustor in good faith believes are creditworthy, at rents not less than the fair market rental value (including, but not limited to, free or discounted rents to the extent the market so requires);
 - (iii) promptly upon Lender's request, deliver to Lender a copy of each requested Lease and all amendments thereto and waivers thereof;
 - (iv) promptly upon Lender's request, execute and record any additional assignments of landlord's interest under any Lease to Lender and specific subordinations of any Lease to this Deed of Trust, in form and substance satisfactory to Lender; and
 - (v) promptly upon Lender's request, but in any event by June 30th of each year, provide Lender a current rent roll, certified by Trustor as being true and correct, containing the names of all tenants with respect to the Property, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the

amount of each tenant's security deposit.

Unless consented to in writing by Lender or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (vi) grant any tenant under any Lease any option, right of first refusal or other right to purchase all or any portion of the Property under any circumstances;
- (vii) grant any tenant under any Lease any right to prepay rent more than one (1) month in advance;
- (viii) except upon Lender's request, execute any assignment of landlord's interest in any Lease;
- (ix) except as set forth in Section 3.4(a)(vii), collect rent or other sums due under any Lease in advance, other than to collect rent one (1) month in advance of the time when it becomes due; or
- (x) execute any lease for a term of greater than five (5) years, which deviates materially from the standard form Lease approved by Lender in writing.

Any such attempted action in violation of the provisions of this Section shall be null and void.

(b) Major Leases. Trustor shall, at Trustor's sole cost and expense, give Lender prompt written notice of any material default by landlord or tenant under any Major Lease (as defined below). Unless consented to in writing by Lender or otherwise permitted under any other provision of the Loan Documents, Trustor shall not:

- (i) enter into any Major Lease which (aa) is not on fair market terms (which terms may include free or discounted rent to the extent the market so requires); (bb) does not contain a provision requiring the tenant to execute and deliver to the landlord an estoppel certificate in form and substance satisfactory to the landlord promptly upon the landlord's request; or (cc) allows the tenant to assign or sublet the premises without the landlord's consent;
- (ii) reduce any rent or other sums due from the tenant under any Major Lease;
- (iii) terminate or materially modify or amend any Major Lease; or
- (iv) release or discharge the tenant or any guarantor under any Major Lease from any material obligation thereunder.

Any such attempted action in violation of the provisions of this Section shall be null and void.

Without in any way limiting the requirement of Lender's consent hereunder, any sums received by Trustor in consideration of any termination or material modification or amendment of any Major Lease or any release or discharge of any tenant under any Major Lease from any material obligation thereunder shall be applied to reduce the outstanding Secured Obligations (without payment of a prepayment charge) and any such sums received by Trustor shall be held in trust by Trustor for such purpose; provided, however, so long as no Event of Default shall exist at the time, any sums received by Trustor in consideration of any termination (or the release or discharge of any tenant), modification or amendment of any Major Lease which: (A) total less than \$50,000 shall be payable to Trustor; and (B) total \$50,000 or more shall be placed into an impound account and shall be released to Trustor from time to time upon delivery of an executed replacement tenant lease and satisfactory evidence as to the completion of re-tenanting work. Following the completion of such re-

tenanting work, and provided no Default shall exist at such time, Lender shall release any excess funds received by Trustor with respect to the termination of any Major Lease to Trustor. "Major Lease", as used herein, shall mean (x) a Lease of more than twenty percent (20%) of the total rentable area of all buildings forming a part of the Property, as reasonably determined by Lender, (y) cell tower Leases, and (z) Leases of oil, gas and mineral rights. Trustor's obligations with respect to Major Leases shall be governed by the provisions of Section 3.4(a) applicable to all Leases as well as by the provisions of this Section. Lender's failure to deny any written request by Trustor for consent under this Section within five (5) Business Days (as defined in the Note) after Lender's receipt of such request (and all documents and information reasonably related thereto) shall be deemed to constitute Lender's consent to such request.

3.5 Estoppel Certificates. Within thirty (30) days after request by Lender, Trustor shall deliver to Lender and to any party designated by Lender, estoppel certificates relating to the Leases (excluding Leases of storage units) executed by Trustor and by each of the tenants, in form and substance acceptable to Lender; provided, however, if any tenant shall fail or refuse to so execute and deliver any such estoppel certificate upon request, Trustor shall use reasonable efforts to cause such tenant to execute and deliver such estoppel certificate but such tenant's continued failure or refusal to do so, despite Trustor's reasonable efforts, shall not constitute a default by Trustor under this Section.

3.6 Right of Subordination. Lender may at any time and from time to time by specific written instrument intended for the purpose unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Trustor, any tenant or any other person. Notice is hereby given to each tenant under a Lease of such right to subordinate. No subordination referred to in this Section shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder. Nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

3.7 Utah Uniform Assignment of Rents Act. Each provision of this Article 3 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of Article 3 and the provisions of the Act, the provisions of the Act shall control and Lender shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

ARTICLE 4

SECURITY AGREEMENT AND FIXTURE FILING

4.1 Security Interest. Trustor grants and assigns to Lender a security interest to secure payment and performance of all of the Secured Obligations, in Trustor's interest in all of the following described personal property in which Trustor now or at any time hereafter has any interest (the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings (including consumer goods, inventory, equipment and farm products), signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits and profits of the Property (to the extent, if any, they are not subject to the assignment of leases and rents set forth in Article 3 of this Deed of Trust); all inventory, accounts, cash receipts, impounds, accounts receivable, contract rights, general intangibles (including payment intangibles and software), chattel paper (including electronic chattel paper and tangible chattel paper), instruments, documents, notes, drafts, letter of credit rights and deposit accounts (as those terms are defined in the UCC (as defined below)), insurance policies, insurance and condemnation awards and proceeds (including without limitation all Claims and Proceeds of Claims as such terms are defined below), any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Trustor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property, including but not limited for the Intended Use; all interest in any assignments of leases to adjoining real property and options to purchase such property; all deposits

Deed of Trust

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or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed, all funds deposited with Lender pursuant to any Loan Document, including, without limitation, all "Restoration Funds" as defined herein; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under the Utah Uniform Commercial Code ("UCC"). As to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Lender, 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 Ann. § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Ann. § 57-1-30 or other applicable law.

Trustor irrevocably authorizes Lender to file, in the appropriate locations for filings of Financing Statements in any jurisdiction(s) that Lender in good faith deems appropriate, such Financing Statements and amendments thereto as Lender may deem necessary or desirable in order to (i) perfect or continue the security interests granted by Trustor to Lender pursuant to this Deed of Trust, (ii) prevent any filed Financing Statement from becoming misleading, or (iii) prevent any filed Financing Statement from losing its perfected status. Trustor hereby authorizes Lender to cause any financing statement or fixture filing to be filed or recorded without the necessity of any signature of Trustor on such financing statement or fixture filing. Any initial financing statements and amendments thereto may (a) indicate the personal property or Collateral: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the personal property or Collateral falls within the scope of Article 9a of the Uniform Commercial Code of the State of Utah or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of Article 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, 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 Lender and agrees that it will not do so without the prior written consent of Lender, subject to Trustor's rights under Section 9a-509 of the Utah Uniform Commercial Code.

4.2 Rights of Lender. In addition to Lender's rights as a "Secured Party" under the UCC, Lender may, but shall not be obligated to, at any time without notice and at the expense of Trustor as a "Debtor": (a) give notice to any person of Lender's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Lender therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Lender be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Lender unless Lender shall make an express written election of said remedy under the UCC or other applicable law.

4.3 Additional Rights of Lender Upon an Event of Default. Upon the occurrence of an Event of Default hereunder, then in addition to all of Lender's rights as a Secured Party under the UCC or otherwise at law:

- (a) Sale of Collateral. Lender may: (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Lender at a place designated by Lender; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell and dispose of any or all of the Collateral, and store the same at locations acceptable to Lender at Trustor's expense; or (iii) sell, assign and deliver at any place or

in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and

(b) Other Rights. Lender may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Lender deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise or settlement including insurance claims, which Lender may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Lender's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that five (5) days prior notice of such disposition is commercially reasonable notice. Trustor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Lender first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

4.4 Additional Covenants of Trustor. Trustor, at its sole cost and expense, (a) shall give Lender at least thirty (30) days prior written notice of any change in Trustor's principal place of business and the acquisition or use of a trade name or style by Trustor; (b) shall promptly notify Lender in writing of any claim, lien, security interest, right, encumbrance or any other occurrence which may be adverse to Lender's security interest in the Collateral; (c) shall defend the Collateral from all claims, liens, security interests, rights, encumbrances and other matters which are adverse to Lender's security interest in the Collateral; (d) shall promptly pay all costs and expenses relating to the purchase, ownership, or use of the Collateral, including all liens, taxes, assessments and charges of Governmental Authorities levied, assessed or imposed on all or part of the Collateral; (e) shall not sell, transfer, pledge, hypothecate, lease or otherwise dispose of or abandon all or part of the Collateral without Lender's prior written consent, except for the sale of inventory in the ordinary course of Trustor's business or the disposition of any Collateral which is replaced with new Collateral of substantially comparable value and utility; (f) shall not remove any material part of the Collateral which consists of tangible personal property from its location on the Property without Lender's prior written consent; (g) shall, upon Lender's request, give notice, in form and substance acceptable to Lender, to any or all account debtors designated by Lender of Trustor's grant of a security interest in any Collateral which consists of accounts, contract rights, instruments, documents, or general intangibles (referred to collectively as the "Accounts" and individually as an "Account"); (h) following the occurrence of any Event of Default, shall not compromise, settle, adjust, or grant any discount, credit, or allowance to any Account debtor without Lender's prior written consent; (i) shall undertake any and all other acts necessary or appropriate to maintain, preserve and protect the Collateral and Lender's security interest therein, including any actions requested by Lender; and (j) shall execute and deliver to Lender such other documents as Lender may request in order to evidence, effectuate, perfect, maintain, preserve or protect Lender's security interest in the Collateral, including financing statements, continuation financing statements, financing statement amendments, security agreements, and assignments. If Trustor fails to execute and deliver to Lender any document requested by Lender pursuant Section 4.4 within ten (10) days after such request, then Trustor irrevocably appoints Lender, with full power of substitution, as Trustor's attorney-in-fact, coupled with an interest, with full power, in its own name or in the name of Trustor, to execute such document on behalf of Trustor. Trustor has set forth above its full and correct name, and Trustor does not presently use any other names or tradenames, except for those tradenames specifically disclosed in writing by Trustor to Lender prior to the recordation of this Deed of Trust. Nothing contained in this Article 4 shall be construed to obligate Lender to act on behalf of Trustor as attorney-in-fact.

4.5 FOR PURPOSES OF THE UCC THE FOLLOWING INFORMATION IS FURNISHED:

Name, address of Debtor(s):

FOUNTAINHEAD DEVELOPMENT 2.0,
LLC, a California limited liability company

Deed of Trust

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1401 Quail Street #100
Newport Beach, CA 92660

Name and address
of Secured Party

Bofl Federal Bank
4350 La Jolla Village Dr., Ste. 140
San Diego, CA 92122

Description of the type
(or items) of property (constituting the
Collateral):

See Section 4.1.

Description of real property
to which the Collateral
is attached or upon which
it is or will be located:

See Exhibit A hereto.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 **Representations and Warranties.** Trustor represents and warrants to Lender that, to Trustor's current actual knowledge after reasonable investigation and inquiry, the following statements are true and correct as of the Closing Date (as defined in the Note):

- (a) **Legal Status.** Trustor is qualified or licensed to do business in all jurisdictions in which such qualification or licensing is required.
- (b) **Permits.** Trustor possesses all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, necessary to enable Trustor to conduct the business(es) in which Trustor is now engaged in compliance with applicable law.
- (c) **Authorization and Validity.** The execution and delivery of the Loan Documents have been duly authorized and the Loan Documents constitute valid and binding obligations of Trustor, in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, moratorium or other laws affecting the enforcement of creditors' rights, or by the application of rules of equity.
- (d) **Violations.** The execution, delivery and performance by Trustor of each of the Loan Documents do not violate any provision of any law or regulation, or result in any breach or default under any contract, obligation, indenture or other instrument to which Trustor is a party or by which Trustor is bound.
- (e) **Litigation.** There are no pending or threatened actions, claims, investigations, suits or proceedings before any governmental authority, court or administrative agency which may adversely affect the financial condition or operations of Trustor other than those previously disclosed in writing by Trustor to Lender.

(f) Financial Statements. The financial statements of Trustor, of each general partner (if Trustor or Trustor is a partnership), of each member (if Trustor is a limited liability company) and of each guarantor, if any, previously delivered by Trustor to Lender: (i) are materially complete and correct; (ii) present fairly the financial condition of such party; and (iii) have been prepared in accordance with the same accounting standard used by Trustor to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan, or other accounting standards approved by Lender. Since the date of such financial statements, there has been no material adverse change in such financial condition, nor have any assets or properties reflected on such financial statements been sold, transferred, assigned, mortgaged, pledged or encumbered except as previously disclosed in writing by Trustor to Lender and approved in writing by Lender.

(g) Reports. All reports, documents, instruments and information delivered to Lender in connection with the Loan: (i) are correct and sufficiently complete to give Lender accurate knowledge of their subject matter; and (ii) do not contain any misrepresentation of a material fact or omission of a material fact which omission makes the provided information misleading.

(h) Income Taxes. There are no pending assessments or adjustments of Trustor's or guarantor's, if any, income tax payable with respect to any year.

(i) Subordination. There is no agreement or instrument to which Trustor is a party or by which Trustor is bound that would require the subordination in right of payment of any of Trustor's obligations under the Note to an obligation owed to another party.

(j) Title. Trustor lawfully holds and possesses fee simple title to the Property, without limitation on the right to encumber same. This Deed of Trust is a first lien on the Property prior and superior to all other liens and encumbrances on the Property except: (i) liens for real estate taxes and assessments not yet due and payable; (ii) senior exceptions previously approved by Lender and shown in the title insurance policy insuring the lien of this Deed of Trust; and (iii) other matters, if any, previously disclosed to Lender by Trustor in a writing specifically referring to this representation and warranty.

(k) Mechanics' Liens. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under law could give rise to any such liens) affecting the Property which are or may be prior to or equal to the lien of this Deed of Trust.

(l) Encroachments. To the best of Trustor's knowledge, except as shown in the survey, if any, previously delivered to Lender, none of the buildings or other improvements which were included for the purpose of determining the appraised value of the Property lies outside of the boundaries or building restriction lines of the Property and no buildings or other improvements located on adjoining properties encroach upon the Property.

(m) Leases. All existing Leases are in full force and effect and are enforceable in accordance with their respective terms. No material breach or default by any party, or event which would constitute a material breach or default by any party after notice or the passage of time, or both, exists under any existing Lease. None of the landlord's interests under any of the Leases, including, but not limited to, rents, additional rents, charges, issues or profits, has been transferred or assigned. No rent or other payment under any existing Lease has been paid by any tenant for more than one (1) month in advance.

(n) Collateral. Trustor has good title to the existing Collateral. Trustor has not previously assigned or encumbered Trustor's interest in any of the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity. Trustor's principal place of business is located at the address shown in this Deed of Trust.

(o) Condition and Use of Property. Except as shown in the property condition survey or other engineering reports, if any, previously delivered to or obtained by Lender, the Property is in good condition and repair and is free from any damage, waste or defect that would materially and adversely affect the value of the Property as security for the Loan or the intended use of the Property. The Property is and shall remain for the term of Loan exclusively used for the commercial purpose of a multifamily housing complex of more than four (4) units, with units leased to residents.

(p) Wetlands. No part of the Property consists of or is classified as wetlands, tidelands or swamp and overflow lands.

(q) Compliance With Laws; ERISA.

(i) All federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990, as amended from time to time (42 U.S.C. Section 12101 et seq.) have been satisfied or complied with. Trustor is in possession of all certificates of occupancy and all other licenses, permits and other authorizations required by applicable law for the existing use of the Property. All such certificates of occupancy and other licenses, permits and authorizations are valid and in full force and effect.

(ii) Trustor shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Deed of Trust and the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(iii) Trustor is not or will not be an "employee benefit plan" as defined in Section 3(32) of ERISA, which is subject to Title I of ERISA, and the assets of Trustor do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA. Trustor is not or will not be a "governmental plan" within the meaning of Section 3(32) of ERISA, and transactions by or with Trustor are not and will not be subject to state statutes applicable to Trustor regulating investments of and fiduciary obligations with respect to governmental plans.

(r) Property Taxes and Other Liabilities. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, and ground rents, if any, which previously became due and owing in respect of the Property have been paid.

(s) Condemnation. There is no proceeding pending or threatened for the total or partial condemnation of the Property.

(t) Homestead. There is no homestead or other exemption available to Trustor which would materially interfere with the right to sell the Property at a trustee's sale or the right to foreclose this Deed of Trust.

(u) Commercial Property. For purposes of Utah Code Ann. § 57-1-25 and Utah Code Ann. § 78B-6-901.5, Trustor agrees that the stated purpose for which this Deed of Trust was given is not to finance residential rental property.

ARTICLE 6

RIGHTS AND DUTIES OF THE PARTIES

6.1 Maintenance and Preservation of the Property. Trustor shall: (a) keep the Property in good condition and repair; (b) complete or restore promptly and in workmanlike manner the Property or any part thereof which may be damaged or destroyed (unless, if and to the extent permitted under Section 6.10, Deed of Trust

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Lender elects to require that insurance proceeds be used to reduce the Secured Obligations and after such repayment the ratio of Secured Obligations to the value of the Property, as reasonably determined by Lender is the same as or lower than it was immediately before the loss or taking occurred); (c) comply and cause the Property to comply with (i) all laws, ordinances, regulations and standards, (ii) all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character and (iii) all requirements of insurance companies and any bureau or agency which establishes standards of insurability, which laws, covenants or requirements affect the Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work of alteration, improvement or demolition as such laws, covenants or requirements mandate; (d) operate and manage the Property at all times in a professional manner and do all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value; (e) promptly after execution, deliver to Lender a copy of any management agreement concerning the Property and all amendments thereto and waivers thereof; and (f) execute and acknowledge all further documents, instruments and other papers as Lender or Trustee deems necessary or appropriate to preserve, continue, perfect and enjoy the benefits of this Deed of Trust and perform Trustor's obligations, including, without limitation, statements of the amount secured hereby then owing and statements of no offset. Trustor shall not: (g) remove or demolish all or any material part of the Property; (h) alter either (i) the exterior of the Property in a manner which materially and adversely affects the value of the Property or (ii) the roof or other structural elements of the Property in a manner which requires a building permit; (i) initiate or acquiesce in any change in any zoning or other land classification which affects the Property; (j) materially alter the type of occupancy or use of all or any part of the Property; or (k) commit or permit waste of the Property.

6.2 Compliance with Laws. Trustor shall comply with all federal, state and local laws, rules and regulations applicable to the Property, including, without limitation, all zoning and building requirements and all requirements of the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), as amended from time to time. Trustor shall possess and maintain or cause Trustor to possess and maintain in full force and effect at all times (a) all certificates of occupancy and other licenses, permits and authorizations required by applicable law for the existing use of the Property and (b) all permits, franchises and licenses and all rights to all trademarks, trade names, patents and fictitious names, if any, required by applicable law for Trustor to conduct the business(es) in which Trustor is now engaged.

6.3 Litigation. Trustor shall promptly notify Lender in writing of any litigation pending or threatened against either Trustor Party claiming damages in excess of \$50,000 and of all pending or threatened litigation against either Trustor Party if the aggregate damage claims against Trustor exceed \$100,000.00.

6.4 Merger, Consolidation, Transfer of Assets. Trustor shall not: (a) merge or consolidate with any other entity or permit Trustor to merge or consolidate with any other entity; (b) make any substantial change in the nature of Trustor's business or structure or permit Trustor to make any substantial change in the nature of Trustor's business or structure; (c) acquire all or substantially all of the assets of any other entity or permit Trustor to acquire all or substantially all of the assets of any other entity; or (d) sell, lease, assign, transfer or otherwise dispose of a material part of Trustor's assets except in the ordinary course of Trustor's business or permit Trustor to sell, lease, assign, transfer or otherwise dispose of a material part of Trustor's assets except in the ordinary course of Trustor's business.

6.5 Accounting Records. Trustor shall maintain adequate books and records in accordance with the same accounting standard used by Trustor to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan or other accounting standards approved by Lender. Trustor shall permit and shall cause Trustor to permit any representative of Lender, at any reasonable time and from time to time, to inspect, audit and examine such books and records and make copies of same.

6.6 Financial Statements and Accounts.

6.6.1 Statements Required. During the term of the Loan or while any liabilities of Trustor to Lender under

any of the Loan Documents remain outstanding and unless Lender otherwise consents in writing, Trustor shall provide to Lender or cause to be provided to Lender, each in a form acceptable to Lender, the following:

(a) Leasing Schedule. Not later than thirty (30) days after written request by Lender, a schedule, signed and dated by Trustor, showing the following lease information with regard to each tenant: the name of the tenant, a description of the premises, monthly or other periodic rental amount, dates of commencement and expiration of the lease, and payment status;

(b) Balance Sheet and Annual Financial Statements. With respect to Both Trustor and any guarantor or indemnitor, in each case, not later than ninety (90) days after the close of the respective fiscal years of Trustor, any guarantor, and any indemnitor, balance sheet and financial statements, including, as applicable and without limitation: (i) balance sheet for the Property, signed and dated by Trustor; (ii) a schedule, signed and dated by Trustor, showing all revenues and expenses during such fiscal year, relating to the Property; (iii) financial statements showing all assets and liabilities of Trustor, which shall be certified by a principal, managing member or general partner of Trustor as being true, correct and complete or, upon the reasonable request of Lender, audited by an independent certified public accountant; and (iv) financial statements showing all assets and liabilities of each indemnitor and guarantor under any indemnity or guarantee, which shall be certified by such guarantor or indemnitor or the principal, managing member or general partner of such indemnitor or guarantor, as being true, correct and complete or, upon the reasonable request of Lender, audited by an independent certified public accountant;

(c) Tax Returns. Not later than June 30th of each year, copies of all tax returns (with all schedules) or extensions filed by Trustor and any indemnitor or guarantor under any indemnity or guarantee, unless an extension has been obtained, but no event later than the earlier of (i) September 1st of each year or (ii) within twenty(20) days after filing;

(d) Other Information. From time to time, such other information with regard to Trustor, principals of Trustor, guarantors or the Property as Lender may reasonably request in writing.

6.6.2 Form; Warranty. Trustor agrees that all financial statements to be delivered to Lender, pursuant to the immediately preceding Section, irrespective of whether they pertain to Trustor or any guarantor or indemnitor, in each case, shall: (a) be complete and correct; (b) present fairly the financial condition of the party; (c) disclose all liabilities that are required to be reflected or reserved against; and (d) be prepared in accordance with the same accounting standard used by Trustor, or as applicable, such guarantor or indemnitor, to prepare the financial statements delivered to and approved by Lender in connection with the making of the Loan or other accounting standards acceptable to Lender. By delivering any such financial statement, Trustor shall be deemed to warrant and represent that, as of the date of delivery of any such financial statement, there has been no material adverse change in financial condition, nor have any assets or properties been sold, transferred, assigned, mortgaged, pledged or encumbered since the date of such financial statement except as disclosed by Trustor in a writing delivered to Lender.

Trustor agrees that all leasing schedules and other information to be delivered to Lender pursuant to Section 6.6.1 hereof and this Section 6.6.2, in each case, shall not contain any misrepresentation or omission of a material fact.

6.6.3 Accounts and Primary Banking Relationships. Trustor shall establish its primary deposit and operating accounts with Lender. Trustor shall cause any guarantor of the Loan to establish its primary deposit and operating accounts with Lender.

6.7 Costs, Expenses and Fees. Trustor shall pay to Lender the full amount of all costs and expenses, including, without limitation, attorneys' fees (i.e., outside counsel), incurred by Lender in connection with:

(a) Appraisals and inspections of the Property or Collateral required by Lender as a result of (i) a Transfer

(as hereinafter defined) or proposed Transfer, or (ii) an Event of Default, and (b) any acts performed or proposed to be performed by Lender at Trustor's request or wholly or partially for the benefit of Trustor (including, without limitation, the preparation or review of amendments, assumptions, waivers, releases, reconveyances, estoppel certificates or statements of amounts owing under any Secured Obligation). Trustor shall pay all costs and expenses arising under this Section immediately upon demand by Lender together with interest thereon following notice of such indebtedness at the rate of interest then applicable to the principal balance of the Note as specified therein. Any administrative fees owed to Lender pursuant to the Loan Documents, including, without limitation, those owed pursuant to Section 6.15 hereof (but excluding 16.15.4(a)) shall be due and payable immediately upon Trustor requesting the action from Lender and shall be non-refundable, irrespective of the disposition of the request by Lender. Trustor shall have no expectation that Lender commence review of any matter or request prior to Trustor paying the required fee pursuant to the Loan Documents. In addition and without limitation to Lender's right to recover all its out-of-pocket expenses from Trustor on demand as provided in this Section 6.7, Lender shall have the right to require Trustor to provide a legal deposit (i.e., payment in advance) before engaging outside counsel to do any legal work and to refresh that deposit, at Lender's request, over the pendency of the matter. Trustor shall have no expectation that Lender commence any legal work with outside counsel prior to Trustor paying any legal deposit requested by Lender.

6.8 No Other Liens, Encumbrances and Charges. Except for mechanics liens (which are governed by Section 6.25 hereof), without obtaining Lender's prior written consent (which consent shall be granted or withheld in Lender's sole and absolute discretion and at Trustor's sole cost and expense), Trustor shall not incur any debt, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than the Loan and trade debt incurred in the ordinary course of Trustor's business (with any such trade debt to be paid within sixty (60) days of the date such debt was incurred and, in any event, prior to delinquency). Trustor shall immediately discharge by bonding or otherwise any lien, charge or other encumbrance which attaches to the Property in violation of Section 6.15. Subject to Trustor's right to contest such matters under this Deed of Trust or as expressly permitted in the Loan Documents, Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Property or any interest therein, whether senior or subordinate hereto, including, without limitation, all claims for work or labor performed, or materials or supplies furnished, in connection with any work of demolition, alteration, repair, improvement or construction of or upon the Property, except such as Trustor may in good faith contest or as to which a bona fide dispute may arise (provided provision is made to the satisfaction of Lender for eventual payment thereof in the event that Trustor is obligated to make such payment and that any recorded claim of lien, charge or other encumbrance against the Property is immediately discharged by bonding or otherwise).

6.9 Taxes and Other Liabilities. Trustor shall pay and discharge when due any and all indebtedness, obligations, assessments and taxes, both real and personal and including federal and state income taxes and state and local property taxes and assessments. Trustor shall promptly provide to Lender copies of all tax and assessment notices pertaining to the Property. Trustor hereby authorizes Lender to obtain, at Trustor's expense, a tax service contract which shall provide tax information on the Property to Lender for the term of the Loan and any extensions or renewals of the Loan.

6.10 Insurance Coverage. Trustor shall insure the Property against loss or damage by fire and such other hazards as Lender shall from time to time require, however, not to exceed full replacement cost; provided, however, (a) Lender, at Lender's election, may only require flood insurance if all or any portion of the improvements located on the Property is or becomes located in a special flood hazard area; and (b) Lender, at Lender's election, may only require earthquake insurance if all or any portion of the Property is or becomes located in an earthquake fault zone. Trustor shall also carry public liability insurance and such other insurance as Lender may require, including, without limitation, business interruption insurance or loss of rents insurance. Such policies shall contain a standard mortgage clause naming Lender and its successors and assigns as a loss payee or additional insured, as appropriate, and requiring at least thirty (30) days prior notice to the holder at termination or cancellation. Trustor shall maintain all required

insurance at Trustor's expense, in companies, and in substance and form satisfactory to Lender, including, without limitation, an agreed amount endorsement. Neither Lender nor Trustee, by reason of accepting, rejecting, approving or obtaining insurance shall incur any liability for: (c) the existence, nonexistence, form or legal sufficiency of any insurances; (d) the solvency of any insurer; or (e) the payment of claims.

If Trustor fails to maintain and deliver to Lender the original policies or certificates of insurance required by this Deed of Trust, upon ten (10) days prior notice to Trustor, Lender may procure such insurance at Trustor's sole cost and expense. Trustor agrees to deliver to Lender promptly upon receipt, but in any event no later than thirty (30) days prior to the termination of any of such insurance policies, a renewal policy (or certificate of insurance evidencing the same) satisfying the requirements of this Deed of Trust.

6.11 Insurance and Condemnation Proceeds.

(a) Assignment of Claims. Trustor absolutely and irrevocably assigns to Lender all of the following rights, claims and amounts (collectively, the "**Claims**"), all of which shall be paid to Lender: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Property; (ii) all other claims and awards for damages to or decrease in value of all or any part of, or any interest in, the Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property; and (iv) all interest which may accrue on any of the foregoing. Trustor shall give Lender prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof. So long as no Event of Default has occurred and is continuing at the time, Trustor shall have the right to adjust, compromise and settle any Claim of \$25,000 or less without the consent of Lender, provided, however, all awards, proceeds and other sums described herein shall continue to be payable to Lender. Lender may commence, appear in, defend or prosecute any Claim exceeding \$25,000, and may adjust, compromise and settle all Claims (except for Claims which Trustor may settle as provided herein), but shall not be responsible for any failure to commence, appear in, defend, prosecute or collect any such Claim regardless of the cause of the failure. All awards, proceeds and other sums described herein shall be payable to Lender.

(b) Application of Proceeds; No Event of Default. So long as no Event of Default has occurred and is continuing at the time of Lender's receipt of the proceeds of the Claims (the "**Proceeds**") and no Event of Default occurs thereafter, Lender shall apply the Proceeds in the following order of priority: First, to Lender's expenses in settling, prosecuting or defending the Claims; Second, to the repair or restoration of the Property; and Third, to Trustor if the repair or restoration of the Property has been completed, but to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments if the repair or restoration of the Property has not been completed. Notwithstanding the foregoing, Lender shall have no obligation to make any Proceeds available for the repair or restoration of the Property unless and until all the following conditions have been satisfied in Lender's sole and absolute discretion: (i) delivery to Lender of the Proceeds plus any additional amount which is needed to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) establishment of an arrangement for lien releases and disbursement of funds acceptable to Lender; and (iii) delivery to Lender in form and content acceptable to Lender of all of the following: (aa) plans and specifications for the work; (bb) a contract for the work, signed by a contractor acceptable to Lender; (cc) a cost breakdown for the work; (dd) if required by Lender, a payment and performance bond for the work; (ee) evidence of the continuation of all Leases unless consented to in writing by Lender; (ff) evidence that, upon completion of the work, the size, capacity, value, and income coverage ratios for the Property will be at least as great as those which existed immediately before the damage or condemnation occurred; and (gg) evidence of the satisfaction of any additional conditions that Lender may reasonably establish to protect Lender's security. Trustor acknowledges that the specific conditions described above are reasonable.

(c) Application of Proceeds: Event of Default. If an Event of Default has occurred and is continuing at the time of Lender's receipt of the Proceeds or if an Event of Default occurs at any time thereafter, Lender may, at Lender's absolute discretion and regardless of any impairment of security or lack of impairment of security, but subject to applicable law governing use of the Proceeds, if any, apply all or any of the Proceeds to Lender's expenses in settling, prosecuting or defending the Claims and then apply the balance to the Secured Obligations in any order without suspending, extending or reducing any obligation of Trustor to make installment payments, and may release all or any part of the Proceeds to Trustor upon any conditions Lender chooses.

6.12 Impounds.

(a) Taxes and Insurance. If required by Lender at any time, on each Payment Date (as defined in the Note) on which both principal and interest under the Loan are payable, Lender, at its sole option, may require that Trustor pay, an amount estimated from time to time by Lender in its sole discretion to pay one-twelfth (1/12th) of an amount which would be sufficient to pay all "Costs". The term "Cost" shall mean (i) all taxes and other liabilities payable by Trustor under Section 6.9; (ii) all insurance premiums payable by Trustor under Section 6.10; (iii) all other Costs and expenses required for impounds; and/or (iv) all other amounts that in Lender's sole and independent determination will be required to preserve the value of the Property. Trustor shall deliver to Lender, promptly upon receipt, all bills for Costs for which Lender has required Impounds. So long as there has been no Event of Default, Lender waives the requirement of Costs to be paid on each Payment Date.

(b) Post-Default Impounds. In the event Lender at any time waives the requirement that Trustor pays Costs, and if required by Lender at any time after an Event of Default occurs (and regardless of whether such an Event of Default is thereafter cured), Trustor shall deposit with Lender such amounts Post-Default Impounds on such dates (determined by Lender as provided below) as will be sufficient to pay any or all Costs specified by Lender. Lender in its sole discretion shall estimate the amount of such Costs that will be payable or required during any period selected by Lender not exceeding one year and shall determine the fractional portion thereof that Trustor shall deposit with Lender on each date specified by Lender during such period. If the Post-Default Impounds paid by Trustor are not sufficient to pay the related Costs, Trustor shall deposit with Lender upon demand an amount equal to the deficiency. All Post-Default Impounds shall be payable by Trustor in addition to (but without duplication of) any other Impounds.

(c) All Impounds. Post-Default Impounds and any other impounds that may be payable by Trustor under the Note are collectively called "Impounds". All Impounds shall be deposited into an account maintained by Lender or its servicing agent, which may be a commingled account, and Lender shall not be entitled to interest thereon. Lender shall not be a trustee, special depository or other fiduciary for Trustor with respect to such account, and the existence of such account shall not limit Lender's rights under this Deed of Trust, any other agreement or any provision of law. If no Event of Default exists, Lender shall apply all Impounds to the payment of the related Costs, or in Lender's sole discretion may release any or all Impounds to Trustor for application to and payment of such Costs. If an Event of Default exists, Lender may apply any or all Impounds to any Secured Obligation and/or to cure such Event of Default, whereupon Trustor shall restore all Impounds so applied and cure all Events of Default not cured by such application. The obligations of Trustor hereunder shall not be diminished by deposits of Impounds made by Trustor, except to the extent that such obligations have actually been met by application of such Impounds. Upon any assignment of this Deed of Trust, Lender may assign all Impounds in its possession to Lender's assignee, whereupon Lender and Trustee shall be released from all liability with respect to such Impounds. Within sixty (60) days following full repayment of the Secured Obligations (other than as a consequence of foreclosure or conveyance in lieu of foreclosure) or at such earlier time as Lender may elect, Lender shall pay to Trustor all Impounds in its possession, and no other party shall have any right or claim thereto.

6.13 Defense and Notice of Losses, Claims and Actions. Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Lender and Trustee hereunder at Trustor's sole expense against all adverse claims, whether the claim: (a) is against a possessory or non-possessory interest; (b) arose prior or subsequent to the Closing Date; or (c) is senior or junior to Trustor's or Lender's rights. Trustor shall give Lender and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Property and of any condemnation offer or action.

6.14 Right of Inspection. Lender and its independent contractors, agents and employees may enter the Property from time to time at any reasonable time for the purpose of inspecting the Property and ascertaining Trustor's compliance with the terms of this Deed of Trust. Lender shall use reasonable efforts to assure that Lender's entry upon and inspection of the Property shall not materially and unreasonably interfere with the business or operations of Trustor's tenants on the Property.

6.15 Transfer of Property or Interests in Trustor.

6.15.1 Prohibition. Trustor acknowledges that Lender has relied upon the principal(s) of Trustor and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except pursuant to the prior written consent of Lender, which Lender may withhold, delay, or condition in Lender's sole discretion (including, without limitation, pursuant to the terms of Section 6.15.4 hereof), Trustor shall not cause or permit any Transfer (as defined herein) of, in each case, itself (i.e., the Trustor), the Property, the Collateral (except for equipment and inventory in the ordinary course of its business, with respect to the Collateral only), the Loan, the Note, or this Deed of Trust. "Transfer" means any: (a) sale or exchange; (b) mortgage, pledge, hypothecation or encumbrance; (c) assignment, including, without limitation, assignment by operation of law or for the benefit of creditors or the delegation of duties; (d) direct or indirect conveyance, transfer, or disposition, including, without limitation, any direct transfer, grant, or release of title or legal ownership and any indirect transfer through the use of a nominee, trustee, or receiver (other than a receiver appointed at Lender's request); (e) direct or indirect change of control of the Trustor through any means, including without limitation, serial transactions, contracts, or a change in the ultimate control or beneficial ownership of Trustor (including, without limitation, any transfer of or by, in each case, (i) a general or limited partnership interest; (ii) stock, shares, or other equity; (iii) issuance of new or treasury stock, shares, or other equity or changes in voting rights or the creation of a new class of stock, shares, or other equity interests, in each case, that, whether through one action or a series of actions, effects a direct or indirect change of control in an entity; (iv) a limited liability company or membership interest; (v) direct or indirect control of a trust; (vi) interest in a joint venture contract; or (vii) any other interest analogous or otherwise similar to items (i)-(vi) of this list), as well as changing of a key control person, whether legal or natural, relied upon by Lender as provided in this Section, such as, without limitation, the naming a new general partner of a partnership or manager or managing member of a limited liability company); and (f) any action, transfer, or event of similar effect to the preceding list of items (a)-(e), and the meaning of the meaning of Transfer shall include any of the foregoing circumstances listed in (a)-(f) whether occurring, in each case, voluntarily, involuntarily, by operation of law, through one action or event, or through a series of transactions, legal transfers, or other actions or events even if each individually would not constitute a change in control in or beneficial ownership of Trustor but as a series would constitute a Transfer. If a Transfer is made without the prior written consent of Lender (including, without limitation, any Transfer requiring Lender's prior written consent under Section 6.15.2 hereof), Lender shall have the absolute right at its option, without prior demand or notice, to declare all of the Secured Obligations immediately due and payable, except to the extent prohibited by law, and pursue its rights and remedies under Section 7.3 herein. Trustor agrees to pay any prepayment fee as set forth in the Note in the event the Secured Obligations are accelerated pursuant to the terms of this Section. Lender's consent to one such Transfer shall apply only to the Transfer consented to in that instance and shall not be deemed to be a waiver of the right to require prior written consent to future or successive Transfers. Without limiting the generality of the foregoing provisions of this Section, the capitalized term "Assignment" refers to the subset of Transfers encompassing: (i) any assignment of Trustor's interest in the Note or the Deed of Trust, in each case, including, without limitation, an assignment by operation of law, and (ii) any delegation of duties

by Trustor under, in each case, the Note or the Deed of Trust. Unless Lender, in writing, subsequently ratifies an Assignment made contrary to this Section, any Assignment by Trustor, whether voluntarily or involuntarily, made contrary to this Section (including, without limitation, any Assignment requiring Lender's prior written consent under Section 6.15.2 hereof) shall be null and void *ab initio*. Lender's consent to or ratification of, in each case, one such Assignment shall apply only to the Assignment consented to or ratified in that instance and shall not be deemed to be a waiver of the right to require prior written consent to future or successive Assignments.

6.15.2 Other Permitted Transfers. Notwithstanding and without limiting the generality of the foregoing Section 6.15.1, the following actions shall be permitted subject to the terms of (i) this Section 6.15.2 and (ii) the terms of Section 6.15.1 with respect to any action that requiring Lender's prior written consent that is taken without such consent (i.e., regarding Lender's rights and remedies, including, without limitation, acceleration, payment of the prepayment fee). In the case of the actions described in clauses (a) and (c) of this Section 6.15.2, the actions described therein shall be permitted only with the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned, or delayed.

(a) the direct one-time transfer (i.e., of the interest itself, and not by a higher-level change in control) of up to forty-nine (49%) of: the (i) limited partnership interests in any Trustor that is a limited partnership; (ii) membership interests in any Trustor that is a limited liability company (other than the membership interests (x) of a member that is the manager or managing member of such Trustor or (y) that otherwise constitute control of such Trustor, which, in each case, shall not be transferable without the prior written consent of Lender, which may be withheld, conditioned or delayed by Lender in its sole and absolute discretion); or (iii) voting stock in any Trustor that is a corporation (other than preferred, special, or similar stock that, despite holding less than 50% of the corporation's total stock allows for direct or indirect control of, in each case, the corporation or its board of directors or other governing body, which shall not be transferable without the prior written consent of Lender, which may be withheld, conditioned or delayed by Lender in its sole and absolute discretion).

(b) any involuntary transfer caused by the death or court-adjudicated incapacity of any natural person that is (i) a general partner, shareholder, joint venturer or member of Trustor; (ii) any manager or managing member of Trustor if Trustor is a limited liability company; and (iii) a beneficial owner of a or other natural person that controls a trust.

(c) gifts for estate planning purposes of any natural person's interests in Trustor or in any of Trustor's general partners, members or joint venturers to the spouse or any lineal descendant of such individual, or to a properly constituted trust for the benefit of any one or more of such individual, spouse or lineal descendant, provided, however, that in each case described in clauses (a), (b) or (c) above, such transfer shall be permitted only so long as Trustor is remains as a legal person or, if required, e.g., in the case of a joint venture or general partnership, is reconstituted, following such transfer and so long as those persons responsible for the management of the Property and Trustor remain unchanged following such gift or any replacement management is approved by Lender. Notwithstanding the foregoing provisions of this Section 6.15.2(c), nothing in this Section 6.15.2(c) authorizes title to the Property to be transferred without Lender's prior written consent that would be otherwise required, in each case, under Section 6.15.1 hereof or any other provision this Deed of Trust.

6.15.3 Lender's Written Consent or Ratification: As used in this Section 6.15, any reference to Lender's written consent, approval, or ratification of a Transfer, in each case, requires a writing made by Lender executed by an officer of Lender holding the title Executive Vice President or higher.

6.15.4 Transfer Costs: In connection with any Transfer requiring Lender's consent:

(a) Trustor shall pay an assumption fee in the amount of one percent (1%) of the then unpaid principal balance of the Loan.

(b) Trustor shall pay to Lender both (i) an administrative fee of one thousand five hundred dollars (\$1,500.00) for Lender processing the Transfer and (ii) all Lender's out-of-pocket costs (including, without limitation, any out-of-pocket legal expenses paid to outside counsel and the cost of any appraisal); and

(c) The cost of either (i) a "date down" endorsed to Lender's title insurance policy, including any additional endorsements required by Lender, or (ii) a new title insurance policy, satisfactory to Lender in its discretion, if a "date down" is not available.

In addition to the above-stated, Trustor shall comply with all Lender's then policies and procedures in connection with providing its consent to a Transfer, including but not limited to Trustor and its transferee entering an assumption agreement acceptable to Lender and provide a substitute guarantor (acceptable to Lender in Lender's sole and absolute discretion) who shall sign a Guarantee agreement acceptable to Lender (in Lender's sole and absolute discretion).

Nothing in this Section 6.15.4 limits Lender's discretion to withhold, delay, or condition, in each case, its consent pursuant to the provisions of Sections 16.15.1 and 16.15.2 hereof, including, without limitation, Lender's right to: (i) require other conditions not provided for in this Section 16.15.4; (ii) make decisions regarding Lender's assessment of the creditworthiness of any prospective substitute guarantor or party assuming the obligations hereunder as a result of a proposed Transfer; (iii) require additional conditions related to its credit evaluation of any Transfer or party thereto; (iv) require execution of additional documentation; or (v) refer matters to outside counsel at Trustor's expense to assist with reviewing or consummating any proposed Transfer.

6.16 Acceptance of Trust; Powers and Duties of Trustee. Trustee accepts this trust when this Deed of Trust is recorded. From time to time upon written request of Lender and presentation of this Deed of Trust, or a certified copy thereof, for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any Secured Obligation, Trustee may, without liability therefor and without notice: (a) reconvey all or any part of the Property; (b) consent to the making of any map or plat of the Property; (c) join in granting any easement on the Property; (d) join in any declaration of covenants and restrictions; or (e) join in any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust. Nothing contained in the immediately preceding sentence shall be construed to limit, impair or otherwise affect the rights of Trustor in any respect. Except as may otherwise be required by applicable law, Trustee or Lender may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts hereunder and the enforcement of the rights and remedies available hereunder, and Trustee or Lender may obtain orders or decrees directing or confirming or approving acts in the execution of said trusts and the enforcement of said remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, without limitation, actions in which Trustor, Lender or Trustee shall be a party) unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee shall not be obligated to perform any act required of it hereunder unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against loss, cost, liability and expense.

6.17 Compensation of Trustee. Trustor shall pay to Trustee reasonable compensation and reimbursement for services and expenses in the administration of this trust, including, without limitation, reasonable attorneys' fees. Trustor shall pay all indebtedness arising under this Section immediately upon demand by Trustee or Lender together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Note as specified therein.

6.18 Exculpation. Lender shall not directly or indirectly, be liable to Trustor or any other person as a consequence of: (a) the exercise of the rights, remedies or powers granted to Lender in this Deed of Trust; (b) the failure or refusal of Lender to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or (c) any loss sustained by Trustor or any third party resulting from Lender's failure to lease the Property after an "Event of Default" or from any other act or omission of Lender in managing the Property after an Event of Default unless the loss is caused by Deed of Trust

the willful misconduct and bad faith of Lender and no such liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Trustor.

6.19 Indemnity. Without in any way limiting any other indemnity contained in this Deed of Trust, Trustor agrees to defend, indemnify and hold harmless Trustee and the Lender Group (hereinafter defined) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the making of the Loan, except for violations of banking laws or regulations by the Lender Group; (b) this Deed of Trust; (c) the execution of this Deed of Trust or the performance of any act required or permitted hereunder or by law; (d) any failure of Trustor to perform Trustor's obligations under this Deed of Trust or the other Loan Documents; (e) any alleged obligation or undertaking on the Lender Group's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Property; (f) any act or omission by Trustor or any contractor, agent, employee or representative of Trustor with respect to the Property; or (g) any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion, that Lender may incur, directly or indirectly, as a result of an Event of Default under Sections 5.1(q) or 6.2. The foregoing notwithstanding, this indemnity shall not include any claim, loss, damage, cost, expense or liability directly or indirectly arising out of the gross negligence or willful misconduct of any member of the Lender Group or Trustee, or any claim, loss, damage, cost, expense or liability incurred by the Lender Group or Trustee arising from any act or incident on the Property occurring after the full reconveyance and release of the lien of this Deed of Trust on the Property. This indemnity shall include, without limitation: (aa) all consequential damages (including, without limitation, any third party tort claims or governmental claims, fines or penalties against Trustee or the Lender Group); and (bb) all court costs and reasonable attorneys' fees (including, without limitation, expert witness fees) paid or incurred by Trustee or the Lender Group. "**Lender Group**", as used herein, shall mean (1) Lender (including, without limitation, any participant in the Loan); (2) any entity controlling, controlled by or under common control with Lender; (3) the directors, officers, employees and agents of Lender and such other entities; and (4) the successors, heirs and assigns of the entities and persons described in foregoing clauses (1) through (3). Trustor shall pay immediately upon Trustee's or Lender's demand any amounts owing under this indemnity together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note as specified therein. Trustor agrees to use legal counsel reasonably acceptable to Trustee and the Lender Group in any action or proceeding arising under this indemnity. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION AND RELEASE OF THIS DEED OF TRUST, BUT TRUSTOR'S LIABILITY UNDER THIS INDEMNITY SHALL BE SUBJECT TO THE PROVISIONS OF THE SECTION, IF ANY, IN THE NOTE ENTITLED "**TRUSTOR'S LIABILITY**".

6.20 Substitution of Trustee. From time to time, by a writing signed and acknowledged by Lender and recorded in the office of the County Recorder of the County in which the property is located, Lender may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The execution of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named trustee herein. A writing recorded pursuant to the provisions of this Section shall be conclusive proof of the proper substitution of such new trustee.

6.21 Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Property or in any manner obligated under the Secured Obligations (the "**Interested Parties**"), Lender may, from time to time: (a) fully or partially release any person or entity from liability for the payment or performance of any Secured Obligation; (b) extend the maturity of any Secured Obligation; (c) make any agreement with Trustor increasing the amount or otherwise altering the terms of any Secured Obligation; (d) accept additional security for any Secured Obligation; or (e) release all or any portion of the Property, Collateral and other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any of the Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Property.

6.22 Sale or Participation of Loan. Trustor agrees that Lender may at any time sell, assign, participate or securitize all or any portion of Lender's rights and obligations under the Loan Documents, and that any such sale, assignment, participation or securitization may be to one or more financial institutions or other entities, to private investors, and/or into the public securities market, in Lender's sole discretion. Trustor further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s) or participant(s) all documents and financial and other information heretofore or hereafter provided to or known to Lender with respect to: (a) the Property and its operation; and/or (b) any party connected with the Loan (including, without limitation, Trustor, any partner or member of Trustor, any constituent partner or member of Trustor, any guarantor and any non-Trustor party). In the event of any such sale, assignment, participation or securitization, Lender and the other parties to the same shall share in the rights and obligations of Lender set forth in the Loan Documents as and to the extent they shall agree among themselves. In connection with any such sale, assignment, participation or securitization, Trustor further agrees that the Loan Documents shall be sufficient evidence of the obligations of Trustor to each purchaser, assignee or participant, and Trustor shall, within fifteen (15) days after request by Lender, deliver an estoppel certificate verifying for the benefit of Lender and any other party designated by Lender the status and the terms and provisions of the Loan in form and substance acceptable to Lender, and enter into such amendments or modifications to the Loan Documents as maybe reasonably required in order to facilitate any such sale, assignment, participation or securitization without impairing Trustor's rights or increasing Trustor's obligations. The indemnity obligations of Trustor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant.

6.23 Reconveyance. Upon Lender's written request, and upon surrender of this Deed of Trust or certified copy thereof and any note, instrument or instruments setting forth all obligations secured hereby to Trustee for cancellation, Trustee shall reconvey, without warranty, the Property or that portion thereof then held hereunder. The recitals of any matters of fact or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "**the person or persons legally entitled thereto**". Neither Lender nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Property has been fully released reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto.

6.24 Subrogation. Lender shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Lender pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.

6.25 Mechanics Liens. With respect to mechanic's liens, Trustor agrees as follows:

6.25.2 Trustor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Trustor agrees to furnish due proof of such payment to Lender after payment and before delinquency.

6.25.3 Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Ann. with regard to filings and notices. Trustor shall cause Lender 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 Ann. § 38-1a-201. Trustor shall also provide to Lender 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.

6.25.4 Trustor represents and warrants to Lender 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 Lender 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.

6.25.5 If Lender 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 Lender written evidence acceptable to Lender and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code Ann. § 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.

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

6.25.7 Trustor shall cause, as a condition precedent to Lender entering into the Note, Lender's title insurer to insure in a manner acceptable to Lender 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 Lender, 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.

6.25.8 Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than those expressly permitted by Lender in writing), 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 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 Ann. § 38-1a-804 and otherwise complies with the requirements of Utah Code Ann. § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Lender, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Ann. § 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 Lender) for any such lien or claim, as determined in Lender's reasonable discretion.

6.25.9 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 Lender, Lender 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 of Trustor and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Ann. § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Lender, pay to Lender an amount equal to all costs and expenses incurred by Lender in connection with the exercise by Lender 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 Loan Documents.

6.26 Water Rights. With respect to any Water Rights (as defined below), Trustor agrees as follows:

6.26.2 Trustor shall diligently comply with all deadlines affecting the Water Rights imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State
Deed of Trust

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.

6.26.3 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.

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

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

6.26.6 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.

6.26.7 As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Deed of Trust, means and includes 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 Land, 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 Lender 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.

6.27 Default Interest. For purposes of Utah Code Ann. § 57-1-28, Trustor agrees that (i) all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under any Note or other Loan Document shall constitute a part of and be entitled to the benefits of Lender's Deed of Trust lien upon the Property, and (ii) Lender 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 either 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.

ARTICLE 7

DEFAULT

7.1 Event of Default. An "Event of Default" shall occur automatically upon the occurrence of any one
Deed of Trust

or more of the following events:

(a) Monetary. Trustor shall fail to: (i) pay when due any sums which by their express terms require immediate payment without any grace period or sums which are payable on the Maturity Date; or (ii) pay within five (5) days when due any other sums payable under the Note, this Deed of Trust or any of the other Loan Documents, including, without limitation, any monthly payment due under the Note.

(b) Failure to Perform. Trustor shall fail to observe, perform or discharge any of Trustor's or Trustor's obligations, covenants, conditions or agreements, other than Trustor's or Trustor's payment obligations, under the Note, this Deed of Trust or any of the other Loan Documents, and (i) such failure shall remain uncured for thirty (30) days after written notice thereof shall have been given to Trustor, as the case may be, by Lender; or (ii) if such failure is of such a nature that it cannot be cured within such thirty (30) day period, Trustor shall fail to commence to cure such failure within such thirty (30) day period or shall fail to diligently prosecute such curative action thereafter or shall fail to cure such default within ninety (90) days after written notice thereof was first given to Trustor.

(c) Representations and Warranties. Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Trustor, or a guarantor, if any, to Lender or in connection with any of the Loan Documents, or as an inducement to Lender to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished.

(d) Condemnation, Attachment. The condemnation, seizure or appropriation of any material portion (as reasonably determined by Lender) of the Property, or the sequestration or attachment of, or levy or execution upon any of the Property, the Collateral or any other collateral provided by Trustor under any of the Loan Documents, or any material portion of the other assets of Trustor, which sequestration, attachment, levy or execution is not released or dismissed within forty-five

(e) Uninsured Casualty. The occurrence of an uninsured casualty with respect to any material portion (as reasonably determined by Lender) of the Property unless: (i) no other Event of Default has occurred and is continuing at the time of such casualty or occurs thereafter; (ii) Trustor promptly notifies Lender of the occurrence of such casualty; and (iii) not more than forty-five (45) days after the occurrence of such casualty, Trustor delivers to Lender immediately available funds ("Restoration Funds") in an amount sufficient, in Lender's reasonable opinion, to pay all costs of the repair or restoration (including, without limitation, taxes, financing charges, insurance and rent during the repair period). So long as no Event of Default has occurred and is continuing at the time of Lender's receipt of the Restoration Funds and no Event of Default occurs thereafter, Lender shall make the Restoration Funds available for the repair or restoration of the Property. Notwithstanding the foregoing, Lender shall have no obligation to make any Restoration Funds available for repair or restoration of the Property unless and until all the conditions set forth in clauses (ii) and (iii) of the second sentence of Section 6.11(b) of this Deed of Trust have been satisfied. Trustor acknowledges that the specific conditions described above are reasonable.

(f) Adverse Financial Change. Any adverse change in the financial condition of Trustor or any general partner of Trustor, any guarantor, or any other person or entity from the condition shown on the financial statements submitted to Lender and relied upon by Lender in making the Loan, and which change Lender reasonably determines will have a material adverse effect on (i) the business, operations or condition of the Property; or (ii) the ability of Trustor to pay or perform Trustor's or Trustor's obligations in accordance with the terms of the Note, this Deed of Trust, and the other Loan Documents.

(g) Voluntary Bankruptcy, Insolvency, Dissolution. (i) Trustor's filing a petition for relief under the Bankruptcy Reform Act of 1978, as amended or recodified ("Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Law"); or (ii) Trustor's filing any pleading in any involuntary proceeding under the Bankruptcy Code or other Debtor Relief Law which admits the jurisdiction of a court to regulate Trustor or the Property or the petition's material allegations regarding Trustor's insolvency; or (iii) Trustor's making a general assignment for the benefit of creditors; or (iv) Trustor's applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Trustor or any of its property; or (v) the filing by or against Trustor of a petition seeking the liquidation or dissolution of Trustor or the commencement of any other procedure to liquidate or dissolve Trustor.

(h) Involuntary Bankruptcy. Trustor's failure to effect a full dismissal of any involuntary petition under the Bankruptcy Code or other Debtor Relief Law that is filed against Trustor or in any way restrains or limits Trustor or Lender regarding the Loan or the Property, prior to the earlier of the entry of any order granting relief sought in the involuntary petition or forty-five (45) days after the date of filing of the petition.

(i) Partners, Guarantors. The occurrence of an event specified in Sections 7(g) or 7(h) as to Trustor, any general partner of Trustor, or any guarantor or other person or entity in any manner obligated to Lender under the Loan Documents.

(j) Attachment. If all or any material part of the assets of Trustor, any of the guarantors, or any general partner or manager of Trustor are attached, seized, subjected to a writ or levied upon by any court process and Trustor fails to cause such attachment, seizure, writ or levy to be fully released or removed within sixty (60) days after the occurrence of such event. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

(k) Injunctions. If a court order is entered against Trustor, any of the guarantors, or any General Partner or Manager of Trustor enjoining the conduct of all or part of such Person's business and Trustor fails to cause such injunction to be fully stayed, dissolved or removed within sixty (60) days after such order is entered. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

(l) Dissolution. If Trustor, any of the guarantors, or any General Partner or Manager of Trustor is a corporation, partnership, limited liability company or trust, the dissolution, liquidation, or termination of existence of such Person;

(m) Transfers of Partnership Interests. Any Transfer contrary to Section 6.15 hereof, including, without limitation, if Trustor is a partnership (x) the admission, withdrawal, death, retirement, or removal of any general partner of Trustor or (y) the direct or indirect sale or transfer of an aggregate of more than forty-nine percent (49%) of the beneficial interests in Trustor or, in addition to the foregoing, Lender's receipt of any conflicting written instructions or written demands relating to the Loan from any partners of Trustor which Lender reasonably determines have a material adverse effect on Lender's ability to service or administer the Loan;

(n) Transfers of Corporate Ownership. Any Transfer contrary to Section 6.15 hereof, including, without limitation, if Trustor is a corporation, the direct or indirect sale or transfer of an aggregate of more than forty-nine percent (49%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Deed of Trust;

(o) Transfer of Manager's Interests. Any Transfer contrary to Section 6.15 hereof, including, without limitation, if Trustor is a limited liability company, (x) the appointment, withdrawal, death, retirement or removal of any manager of Trustor or (y) the direct or indirect sale or transfer of an aggregate of more than forty-nine percent (49%) of the beneficial interests of Trustor, or, in addition to the foregoing, Lender's receipt of any conflicting written instructions or written demands relating to the Loan from any members of Trustor which Lender reasonably determines have a material adverse effect on Lender's ability to service or administer the Loan;

(p) Death; Incompetency. If Trustor, any of the guarantors, or any General Partner or Manager of Trustor is an individual, the death or incompetency of such Person, except where applicable law limits or prohibits Lender's declaration of a default based on such occurrences; provided, however, that Lender shall not declare an Event of Default to exist based solely on the death or mental incompetence of any individual guarantor, General Partner, or Manager if, within ninety (90) days after the occurrence of such event, (i) in the case of the death or mental incompetence of a guarantor, Trustor causes a substitute guarantor to execute and deliver to Lender a continuing Guarantee in the form previously executed by the affected guarantor, and Lender in good faith determines that such substitute guarantor's financial condition is comparable to that of the affected guarantor and that such substitute guarantor is otherwise reasonably acceptable to Lender; and (ii) in the case of the death or mental incompetence of a General Partner or Manager, Trustor causes a substitute general partner or manager, as applicable, to be admitted to Trustor or appointed, and Lender in good faith determines that the financial condition, credit history, character, experience, ability and expertise of such substitute general partner or manager are comparable to the affected General Partner or Manager and that such substitute general partner or manager is otherwise acceptable to Lender;

(q) Impairment of Priority. If (i) the priority of this Deed of Trust or Lender's security interest under any of the other agreements securing any or all of the Obligations is impaired for any reason; or (ii) the value of the Property has deteriorated, declined or depreciated as a result of any intentional tortious act or omission by Trustor;

(r) Condemnation. If all or any material part of the Property is transferred to any Governmental Authority as a result of any condemnation proceeding or action with respect to all or any material part of the Property;

(s) Failure to Repair Casualty. If there is an uninsured casualty with respect to the Property, and Trustor (i) fails to commence repairs and reconstruction of the Property within ninety (90) days after such damage; or (ii) thereafter fails to diligently prosecute such repairs and reconstruction to completion;

(t) Transfers of Property. If any of the events described in Section 2.15 above occurs without Lender's prior written consent;

(u) Default by Guarantors. If any guarantor fails to pay any of its indebtedness or perform any of its obligations under any of the Guaranties when due or the revocation, limitation or termination or attempted revocation, limitation or termination of any of the obligations of any guarantor under any of the Guaranties, except in accordance with the express written terms of the Guaranties; or

(v) Misrepresentation by Guarantors. If any request, statement, information, certification, or representation, whether written or oral, submitted or made by any guarantor to Lender in connection

with the Loan or any other extension of credit by Lender to Trustor or such guarantor is false or misleading in any material respect.

(w) Licenses. Trustor fails to do any act or execute any document at any time requested by Lender to provide it an assignment of all licenses necessary to operate the business for its Intended Use.

7.2 Acceleration. Upon the occurrence of an Event of Default, Lender may, at its option, declare all sums owing to Lender under the Note and the other Loan Documents immediately due and payable.

7.3 Rights and Remedies. In addition to the rights and remedies in Section 7.2 above, at any time after an Event of Default, Lender and Trustee shall each have all of the following rights and remedies:

(a) Entry on Property. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to enter upon the Property from time to time and to do such acts and things as Lender or Trustee deem necessary or desirable in order to inspect, investigate, assess and protect the security hereof or to cure any Event of Default, including, without limitation: (i) to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Property which relate to the Property; (ii) to make, terminate, enforce or modify leases of the Property upon such terms and conditions as Lender deems proper; (iii) to make repairs, alterations and improvements to the Property necessary, in Trustee's or Lender's sole judgment, to protect or enhance the security hereof; (iv) to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee hereunder; (v) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Lender or Trustee, is or may be senior in priority hereto, the judgment of Lender or Trustee being conclusive, as between the parties hereto; (vi) to obtain insurance; (vii) to pay any premiums or charges with respect to insurance required to be carried hereunder; and/or (viii) to employ legal counsel, accountants, engineers, consultants, contractors and other appropriate persons to assist them;

(b) Appointment of Receiver. To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Property as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Trustor consents to such appointment;

(c) Judicial Foreclosure, Injunction. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage in accordance with Lender's rights under Utah Code Ann. § 57-1-23 or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

(d) Nonjudicial Foreclosure. To execute a written notice of such an Event of Default to Trustee, as required by Utah Code Ann. § 57-1-24 through § 57-1-26 or other applicable law and of the election to cause the Property to be sold to satisfy the Secured Obligations pursuant to Lender's rights under Utah Code Ann. § 57-1-23. Trustee shall give and record such notice of default and sale as the law then requires as a condition precedent to a trustee's sale as required by as required by Utah Code Ann. § 57-1-24 through § 57-1-26 or other applicable law. When the minimum period of time required by law after such notice has elapsed pursuant to Utah Code Ann. § 57-1-24, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Lender in its sole discretion may

determine (but subject to Trustor's statutory right under Utah Code Ann. § 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Lender shall have the right to direct the order in which the Property is sold. Subject to requirements and limits imposed by law, Trustee may, from time to time postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time may postpone the sale by public announcement until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Ann. § 57-1-27. Trustee shall deliver to the purchaser at such sale a deed conveying the Property in accordance with Utah Code Ann. § 57-1-28. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

Upon any sale made under or by virtue of this Section 7.3(d), whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Lender may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with Utah Code Ann. § 57-1-28(1)(b). In the event of a successful credit bid, Lender shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Lender, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

For purposes of Utah Code Ann. § 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.

Trustor agrees to pay any deficiency arising from any cause, to which Lender may be entitled after applications of the proceeds of any trustee's sale, and Lender may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Ann. § 57-1-32 that the value of the Property as determined and set forth in an FIRREA appraisal of the Property as obtained by Lender on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of Utah Code Ann. § 57-1-32.

Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Ann. §§78-37-1 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(e) Intentionally Omitted.

(f) Rights to Collateral. To exercise all rights Trustee or Lender may have with respect to the Collateral under this Deed of Trust, the UCC or otherwise at law; and

(g) Other Rights. To exercise such other rights as Trustee or Lender may have at law or in equity or pursuant to the terms and conditions of this Deed of Trust or any of the other Loan Documents.

In connection with any sale or sales hereunder, Lender may elect to treat any of the Property which consists of a right in action or which is property that can be severed from the Property (including, without limitation, any improvements forming a part thereof) without causing structural damage thereto as if the same were personal property or a fixture, as the case may be, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Property. Any sale of Collateral hereunder shall be conducted in any manner permitted by the UCC.

7.4 Application of Foreclosure Sale Proceeds. If any foreclosure sale is effected, Trustee shall Trustee shall receive and apply the proceeds from the sale of the Property, or any portion thereof, as follows:

FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which may be provided for in the trust deed.

SECOND: To payment of the Secured Obligations, which are secured by this Deed of Trust.

THIRD: The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in 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, in accordance with Utah Code Ann. § 57-1-29 or any successor provision of Law.

7.5 Waiver of Marshaling Rights. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, hereby waives all rights to have the Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation, marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations.

7.6 No Cure or Waiver. Neither Lender's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Lender or Trustee or any receiver shall cure or waive any Event of Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid or performed and Trustor has cured all other Events of Default hereunder), or impair the status of the security, or prejudice Lender or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Lender of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.

7.7 Payment of Costs, Expenses and Attorneys' Fees. Trustor agrees to pay to Lender immediately and upon demand all costs and expenses incurred by Trustee and Lender in the enforcement of the terms and conditions of this Deed of Trust (including, without limitation, statutory trustee's fees, court costs and attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest applicable to the principal balance of the Note as specified therein.

7.8 Power to File Notices and Cure Events of Default. Trustor hereby irrevocably appoints Lender and its successors and assigns, as its attorney-in-fact, which power of attorney is coupled with an interest, to perform any obligation of Trustor hereunder upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute an Event of Default; provided, however, that: (a) Lender as such attorney-in-fact shall only be accountable for such funds as are actually received by Lender; and (b) Lender shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

7.9 Remedies Cumulative. All rights and remedies of Lender and Trustee provided hereunder are cumulative and are in addition to all rights and remedies provided by applicable law (including specifically that of foreclosure of this instrument as though it were a mortgage) or in any other agreements between Trustor and Lender. Lender may enforce any one or more remedies or rights hereunder successively or

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concurrently.

7.10 Waiver of Certain Rights. With respect to the Property (which Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, Utah Code Ann. § 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 Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

7.11 Waiver of One Action Rule. With respect to the Property, 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 Ann.* § 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 Ann.* § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

7.12 Reinstatement. If Trustor, Trustor's successor interest, or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Lender the reasonable cancellation fee contemplated by Utah Code Ann. § 57-1-31(2), as delivered by Lender, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale.

ARTICLE 8

ENVIRONMENTAL

HAZARDS

8.1 Compliance. Trustor shall comply with all covenants, conditions, provisions, and obligations of Trustor under the Environmental Indemnity Agreement, and Trustor shall comply with all "Hazard Substance Laws" (as hereinafter defined).

8.2 Covenants. Trustor further agrees as follows:

- (a) With or without notice, and without releasing Trustor from any obligation hereunder, to cure any default of Trustor and, in connection therewith, Lender or its agents, acting by themselves or through a court appointed receiver, may enter upon the 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 enter and inspect the Property, to which the decision of Lender as to whether there exists a release or threatened release of "Hazardous Substances" (as defined in the Environmental Indemnity Agreement) in or onto the Property shall be deemed reasonable and conclusive as between the parties hereto; and (ii) to appoint a receiver under Utah Uniform Commercial Real Estate Receivership Act, to obtain possession of the Property by any lawful procedure, or to specifically enforce any of the covenants hereof including Lender's right to enter and inspect the Property for Hazardous Substances. All costs and expenses reasonably 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, contractor, consultants, and attorneys, shall be paid by Trustor. All reimbursement costs and expenses incurred by Trustee and Lender pursuant to this subparagraph (including, without limitation, court costs, consultant fees and attorneys' fees,

whether incurred in litigation or not and whether before or after judgment) shall be added to the Indebtedness and shall bear interest at the Default Rate from the date they are incurred until said sums have been paid.

(b) To the extent allowable by applicable law, Lender may seek a judgment that Trustor has breached its covenants, representations and/or warranties with respect to the environmental matters set forth herein, by commencing and maintaining an action or actions in any court of competent jurisdiction for breach of contract, whether commenced prior to foreclosure of the Property, and to seek the recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Lender (collectively, the "Environmental Costs") incurred or advanced by Lender relating to the cleanup, remediation or other response action, required by applicable law or to which Lender believes necessary to protect the Property, it being conclusively 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 Property were made by Lender in good faith. All Environmental Costs incurred by Lender under this subparagraph (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 (as defined in the Note) from the date of expenditure until said sums have been paid. Lender shall be entitled to bid, at the sale of the Property, the amount of said costs, expenses and interest in addition to the amount of the other obligations hereby secured as a credit bid, the equivalent of cash.

Trustor acknowledges and agrees that notwithstanding any term or provision contained herein or elsewhere, the Environmental Costs shall be exceptions to any limited recourse or exculpatory provision, if applicable, 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 the Property or this Deed of Trust. For the purposes of any action brought under this subparagraph, Trustor hereby waives the defense of laches and any applicable statute of limitations.

(c) Intentionally Omitted.

8.3 Distinct Covenants. Notwithstanding anything to the contrary in this Article 8: (i) Trustor's obligations pursuant to this Article 8 are specific to this Deed of Trust; (ii) the Environmental Indemnity Agreement remains separate herefrom and shall survive, in each case, release, reconveyance, or other termination or satisfaction of this Deed of Trust; and (iii) consistent with Section 2.1 hereof, this Deed of Trust does not secure the Environmental Indemnity Agreement.

8.4 Hazard Substance Laws. As used herein, "Hazard Substance Laws", in addition to any foregoing meaning assigned in this Deed of Trust, means and includes all Utah Department of Environmental Quality (UDEQ) policies, procedures, requirements and regulations, now or hereafter established, including, without limitation, the Utah Environmental Quality Control Act, Title 19, Utah Revised Statutes, including the Utah Air Conservation Act (Utah Code Ann. § 19-2-101 et seq.); the Utah Radiation Control Act (Utah Code Ann. § 19-3-101 et seq.); the Utah Safe Drinking Water Act (Utah Code Ann. § 19-4-101 et seq.); the Utah Water Quality Act (Utah Code Ann. § 19-5-101 et seq.), the Utah Solid and Hazardous Waste Act (Utah Code Ann. § 19-6-101 et seq.), the Utah Hazardous Substance Mitigation Act (Utah Code Ann. § 19-6-301 et seq.), the Utah Underground Storage Tank Act (Utah Code Ann. § 19-6-401 et seq.), or the Solid Waste Management Act (Utah Code Ann. § 19-6-501 et seq.); the Utah Lead Acid Battery Disposal Act (Utah Code Ann. § 19-6-601 et seq.); and the Utah Used Oil Management Act (Utah Code Ann. § 19-6-701 et seq.).

ARTICLE 9

GENERAL PROVISIONS

9.1 Additional Provisions. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Lender and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference. THE OBLIGATIONS AND LIABILITIES OF TRUSTOR UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS ARE SUBJECT TO THE PROVISIONS OF THE SECTION, IF ANY, IN THE NOTE ENTITLED "TRUSTOR'S LIABILITY."

9.2 Non-Waiver. By accepting payment of any amount secured hereby after its due date or late performance of any other Secured Obligation, Lender shall not waive its right against any person obligated directly or indirectly hereunder or on any Secured Obligation, either to require prompt payment or performance when due of all other sums and obligations so secured or to declare default for failure to make such prompt payment or performance. No exercise of any right or remedy by Lender or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law. No failure by Lender or Trustee to exercise any right or remedy hereunder arising upon any Event of Default shall be construed to prejudice Lender's or Trustee's rights or remedies upon the occurrence of any other or subsequent Event Default. No delay by Lender or Trustee in exercising any such right or remedy shall be construed to preclude Lender or Trustee from the exercise thereof at any time while that Event of Default is continuing. No notice to nor demand on Trustor shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances.

9.3 Consents and Approvals. Wherever Lender's consent, approval, acceptance or satisfaction is required under any provision of this Deed of Trust or any of the other Loan Documents, such consent, approval, acceptance or satisfaction shall be exercised in accordance with Section 15.9 of the Note.

9.4 Permitted Contests. After prior written notice to Lender, may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any lien, levy, tax or assessment, or any lien of any laborer, mechanic, materialman, supplier or vendor, or the application to Trustor or the Property of any law or the validity thereof, the assertion or imposition of which, or the failure to pay when due, would constitute an Event of Default; subject to the requirements that: (a) Trustor pursues the contest diligently, in a manner which Lender determines is not prejudicial to Lender, and does not impair the lien of this Deed of Trust; (b) the Property, or any part hereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (c) in the case of the contest of any law or other legal requirement, Lender shall not be in any danger of any civil or criminal liability; and (d) if required by Lender, Trustor deposits with Lender any funds or other forms of assurance (including a bond or letter of credit) satisfactory to Lender to protect Lender from the consequences of the contest being unsuccessful. Trustor's right to contest pursuant to the terms of this provision shall in no way relieve Trustor of its obligations under the Loan or to make payments to Lender as and when due.

9.5 Further Assurances. Trustor shall, upon demand by Lender or Trustee, execute, acknowledge (if appropriate) and deliver any and all documents and instruments and do or cause to be done all further acts reasonably necessary or appropriate to effectuate the provisions hereof.

9.6 Attorneys' Fees. In the event it is necessary for Lender to retain the services of an attorney or any other party to enforce or to commence any legal action to enforce the terms of the Note, this Deed of Trust, or any of the other Loan Documents, or any portion hereof or thereof, Trustor agrees to pay to Lender, in addition to damages or other relief, any and all costs and expenses, including, without limitation, expert witness fees and reasonable attorney's fees incurred by Lender as a result thereof.

9.7 Trustor and Lender Defined. The term "Trustor" includes both the original Trustor and any subsequent owner or owners of any of the Property, and the term "Lender" includes the original Lender and any future owner or holder, including assignees, pledges and participants, of the Note or any interest therein.

9.8 Disclaimers.

(a) Relationship. The relationship of Trustor and Lender under this Deed of Trust and the other Loan Documents is, and shall at all times remain, solely that of Trustor and Lender; and Lender neither undertakes nor assumes any responsibility or duty to Trustor or to any third party with respect to the Property. Notwithstanding any other provisions of this Deed of Trust and the other Loan Documents: (i) Lender is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Trustor, and Lender does not intend to ever assume such status; (ii) Lender does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Trustor; and

(b) No Liability. Lender shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Trustor or any of Trustor's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Trustor or any of Trustor's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.

9.9 Severability. If any term of this Deed of Trust, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Trust, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Deed of Trust shall be valid and enforceable to the fullest extent permitted by law.

9.10 Relationship of Articles. The rights, remedies and interests of Lender under this Deed of Trust established by Article 1 and the security agreement established by Article 4 are independent and cumulative, and there shall be no merger of any lien created by this Deed of Trust with any security interest created by the security agreement. Lender may elect to exercise or enforce any of its rights, remedies or interests under either or both this Deed of Trust or the security agreement as Lender may from time to time deem appropriate. The Assignment of Rents and Leases established by Article 3 is similarly independent of and separate from this Deed of Trust and the Security Agreement.

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

9.12 Obligations of Trustor, Joint and Several. If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.

9.13 Separate and Community Property. Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Lender or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon any separate property or community property of that person.

9.14 Integration; Interpretation. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference in any of the Loan Documents to the Property or Collateral shall include all or any part of the Property or Collateral. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Lender in writing (it being

understood that no amendment or modification of the Loan Documents shall be valid and binding against Lender unless signed by an officer of Lender holding the title of Executive Vice President or higher). When the identity of the parties or other circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9.15 Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Note.

9.16 Successors in Interest. The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. The foregoing sentence shall not be construed to permit Trustor to assign the Loan except as otherwise permitted under the Note or the other Loan Documents.

9.17 Governing Law. This Deed of Trust, the Note and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the State of Utah applicable to contracts made and performed in Utah and any applicable federal law, including, to the extent, with respect to Lender's rights and obligations, that federal law preempts the laws of the State of Utah. Except as provided in the immediately preceding sentence, Trustor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than Utah governs this Deed of Trust, the Note, and other Loan Documents.

9.18 Consent to Jurisdiction. Trustor irrevocably submits to the Jurisdiction of: (a) any state or federal court sitting in the State of Utah over any suit, action, or proceeding, brought by Trustor against Lender, arising out of or relating to this Deed of Trust, the Note or the Loan; (b) any state or federal court sitting in the state where the Property is located or the state in which Trustor's principal place of business is located over any suit, action or proceeding, brought by Lender against Trustor, arising out of or relating to this Deed of Trust, the Note or the Loan; and (c) any state court sitting in the county of the state where the Property is located over any suit, action, or proceeding, brought by Lender to exercise its STATUTORY POWER OF SALE under this Deed of Trust or any action brought by Lender to enforce its rights with respect to the Collateral. Trustor irrevocably waives, to the fullest extent permitted by law, any objection that Trustor may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

9.19 Exhibits. Any and all Exhibits are incorporated into this Deed of Trust by this reference.

9.20 Addresses; Request for Notice. All notices and other communications that are required or permitted to be given to a party under this Deed of Trust shall be in writing, refer to the Loan number, and shall be sent to such party, either by personal delivery, by overnight delivery service, or by certified first- class mail, return receipt requested to the addressee below. All such notices and communications shall be effective upon receipt of such delivery. The addresses of the parties are set forth on page 1 of this Deed of Trust. Trustor's principal place of business is at the address set forth on page 1 of this Deed of Trust.

Any Trustor whose address is set forth on page 1 of this Deed of Trust hereby requests that a copy of notice of default and notice of sale be delivered to it at that address. Failure to insert an address shall constitute a designation of Trustor's last known address as the address for such notice. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving thirty (30) days' notice to the other parties in the manner set forth above.

9.21 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered, will be deemed an original and all of which taken together, will be deemed to be one and the same instrument.

9.22 Time is of the Essence. Time is of the essence with respect to all of Trustor's obligations and agreements hereunder with respect to, in each case, (i) the payment of money; (ii) where any deadline or period for performance is provided; and (iii) where notice, reports, or other information is required to be delivered to Lender.

9.23 Customer Identification - USA Patriot Act Notice. Lender hereby notifies Trustor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Trustor, which information includes the name and address of Trustor and such other information that will allow Lender to identify Trustor in accordance with the Act.

9.24 Uniform Commercial Code. All references to Article 9 of the Uniform Commercial Code of the State of Utah shall be deemed to refer to Article 9a thereof. In the event of any amendment to the provisions of Utah Code Ann. Title 57 or other provisions of Utah Code Ann. referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Administrative Agent, be deemed amended to be consistent with such amendments or Administrative Agent may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

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

9.26 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY WITH REGARD TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TRUSTOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR.

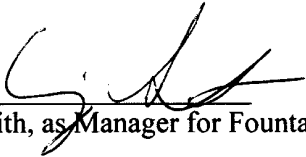
9.27 Integration. PURSUANT TO UTAH CODE ANN. SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

[Signature page follows]

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

TRUSTOR:

FOUNTAINHEAD DEVELOPMENT 2.0, LLC, a California limited liability company

By: 
Craig Smith, as Manager for Fountainhead Development 2.0, LLC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of orange

On february 1, 2018, before me,
Sheri franco - mora, Notary Public, personally appeared
Craig Smith who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized
capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sheri Franco-Mora

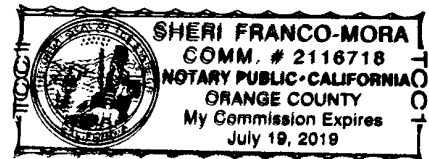


EXHIBIT A

LEGAL DESCRIPTION:

The land referred to in this Commitment is located in Salt Lake County, UT and is described as:

LOTS 1 TO 7 INCLUSIVE, NOALL SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

Said property is also known by the street address of: 156 West 200 North Lake City, UT 84103

APN: 08-36-404-020-000

PROPERTY ADDRESS: 156 West 200 North, Salt Lake City, UT 84103