

This instrument was prepared by, and
after recordation should be returned to:

Greer, Herz & Adams, LLP
Attn: Steven R. Burzinski
2525 South Shore Blvd., Suite 203
League City, Texas 77573

Assessor's Parcel No. 27-13-127-010
CTIA 85058-TF

DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

This Deed of Trust, Security Agreement and Financing Statement (hereinafter termed this "Agreement" or this "Deed of Trust") is entered into as of August 17, 2016, by **SOJO HOTEL PARTNERS, LLC**, a Utah limited liability company (hereinafter termed "Trustor") whose mailing address is 748 W. Heritage Park Blvd., Suite 203, Layton, Utah 84041 to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation (hereinafter termed "Trustee"), whose mailing address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84047, as trustee, for the benefit of **AMERICAN NATIONAL INSURANCE COMPANY**, a Texas insurance company, whose mailing address is Attention: Mortgage and Real Estate Investment Department, 2525 South Shore Blvd., Suite 207, League City, Texas 77550 (hereinafter termed "Beneficiary").

I. DEFINITIONS

A. The term "Indebtedness" shall mean and include:

(1) any and all sums becoming due and payable pursuant to the Note, as defined herein, specifically including amounts representing future advances by Beneficiary to Trustor, any and all interest thereon, and any expenses relating thereto;

(2) any and all other sums becoming due and payable by Trustor to Beneficiary including, but not limited to, such sums as may hereafter be borrowed by Trustor from Beneficiary (it being contemplated that such future indebtedness may be incurred), including, but not limited to, advancements or expenditures made by Beneficiary pursuant to the terms and conditions of this Deed of Trust (including, but not limited to, the repayment of any future or additional advances or costs up to an additional \$34,000,000.00 (such as for real property taxes, insurance premiums, franchise fees, and reasonable attorneys' fees), which Beneficiary may (but is not obligated to) make or incur in accordance with the terms of this Deed of Trust) or any other document evidencing, securing or otherwise relating to the Note;

(3) any and all obligations, covenants, agreements and duties of any kind or character of Trustor now or hereafter existing, known or unknown, arising out of or in

connection with the Note, this Deed of Trust, the Loan Agreement, as defined herein, or any of the other Loan Documents, as defined herein; and

(4) any and all renewals, extensions, modifications, increases, consolidations and rearrangements of any or all of the obligations, covenants, agreements and duties of Trustor, whether or not Trustor executes any renewal, extension, modification, increase, consolidation or rearrangement.

B. The term "**Collateral**" shall mean and include(a) all of the goods, articles of personal property, accounts, general intangibles, instruments, documents, furniture, furnishings, equipment and/or fixtures of every kind and nature whatever (including without limitation, the items described in subsections (b) through (h) below but expressly excluding the Franchise Agreement, defined below, if and to the extent such exclusion is required by the Franchise Agreement) now or hereafter owned by Trustor, in or hereafter placed in, or used or which may become used, in connection with or in the use, enjoyment, ownership or operation of the Mortgaged Premises (hereinafter defined) including, without limitation, the Hotel operation to be conducted therein (the "**Hotel**"), together with all additions thereto, replacements thereof, substitutions therefor and all proceeds thereof, but excluding any such items owned by Franchisor or any Hotel guests or any Hotel operator in accordance with its rights under any Hotel management agreement consented to in writing by Beneficiary; (b) all rents, rentals, payments, compensations, revenues, profits, incomes, leases, licenses, concession agreements, parking agreements (including, without limitation, the Master Parking Agreement), insurance policies, plans and specifications, contract rights (including, without limitation, the MDA, all construction contracts, architect's contracts and engineering contracts but specifically excluding the Franchise Agreement if and to the extent such exclusion is required in order to comply with the Franchise Agreement), accounts (including, without limitation, the advance reservations and bookings for the Hotel, as the same may be amended, canceled and renewed by Trustor or any Hotel operator in accordance with its rights under any Hotel management agreement and advance deposits made in respect thereof; and all accounts receivable arising from the operation of the Hotel, including, without limitation, any and all accounts receivable owing from any guests of the Hotel incurred during that guest's stay); all escrowed funds (including, without limitation, the FF&E Replacement Reserve, as defined below, and the Budgeted Start Up Costs Escrow, as defined in the Loan Agreement), and general intangibles in any way relating to the Mortgaged Premises or used or useful in the use, enjoyment, ownership or operation of the Mortgaged Premises; (c) to the extent Trustor has a right to grant a security interest therein, all names, trade names, signs, marks and trademarks under or by which the Mortgaged Premises may at any time be operated or known, all rights to carry on business under any such names, trade names, signs, marks and trade marks, or any variant thereof, any goodwill in any way relating to the Mortgaged Premises and all of Trustor's rights to carry on the business of Trustor or the Hotel under all such names, trade names, signs, marks and trade marks, or any variant thereof; (d) all telephones (including all of Trustor's interest as tenant in any leases thereof), televisions (including all of Trustor's interest as tenant in any leases thereof), bedding, bed linens, towels, window treatments, safety equipment and the tangible articles of personal property owned or leased by Trustor used or useful in the use, enjoyment, ownership or

operation of the Mortgaged Premises; all inventories of supplies used in connection with the operation of the business of the Hotel including, without limitation, paper goods, brochures, office supplies, food and beverage inventory (to the extent the transfer of same is permissible under applicable law), chinaware, glassware, flatware, table linens, soap and other operational and guest supplies located at the Hotel; all of the books, records, files, budgets, projections, strategic plans, business plans and specifications, drawings, test reports, inspections and engineering reports, guest registers, employment records, maintenance records, rental and reservation records, and any customer or frequent guest lists of Trustor in connection with the use, enjoyment, ownership or operation of the Mortgaged Premises; (e) all governmental permits relating to construction on the Mortgaged Premises, and all other consents, authorizations, variances or waivers, licenses, permits and approvals from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality in respect of the Hotel, held or used by Trustor relating to the Hotel; (f) all deposits, awards, damages, payments, escrowed monies, insurance proceeds, condemnation awards or other compensation, and interests, fees, charges or payments accruing on or received from or to be received on any of the foregoing in any way relating to the Mortgaged Premises, or the ownership, enjoyment or operation of the Mortgaged Premises together with all proceeds of all of the foregoing described in this Section I(B); (g) all cash, securities, uncertificated securities, investment property, securities accounts, financial assets, deposit accounts, securities entitlements and other personal property now or hereafter in or coming into or being credited to, or represented by any account in or shares of any Shelton Fund (including the United States Treasury Trust of Shelton Funds) including, without limitation, all interest, dividends, rights, options, powers, splits and income thereon; and (h) all products, proceeds, substitutions, renumberings and replacements of any of the collateral described in this paragraph. Notwithstanding anything to the contrary in the foregoing provisions of this Section I(B), to the extent required in order to comply with the Franchise Agreement, the Franchise Agreement is expressly excluded from the term “Collateral”.

C. The term “Mortgaged Premises” shall mean (1) the real property situated in the City of South Jordan, County of Salt Lake, State of Utah, described on Exhibit “A”, which is attached hereto and incorporated herein for all purposes (the “Land”); together with all of Trustor’s right, title and interest in and to all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all materials now or hereafter placed thereon intended for construction, reconstruction, alteration and repair of such buildings and improvements, all of which materials shall be deemed to be included as a part of said real property immediately upon the delivery thereof to said real property; (2) Trustor’s right, title and interest in and to all fixtures now or hereafter owned by Trustor and attached to, contained in or used in connection with said Land, and all renewals and replacements thereof, including but not limited to (a) all equipment, apparatus, machinery, motors, elevators, fittings and radiators, (b) all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment, (c) all awnings, storm windows and doors, mantels, cabinets, computer flooring, rugs, carpeting, linoleum, stoves, shades, draperies, blinds and water heaters, (d) such other goods and chattels and personal property as are usually furnished by landlords in letting an unfurnished building, or which shall be attached to said buildings and improvements by nails,

screws, bolts, pipe connections, masonry or in any other manner and (e) all built-in equipment as may be shown by plans and specifications; and (3) to the extent owned by Trustor, the air space and right to use said air space above the Mortgaged Premises, all rights of ingress and egress by pedestrians and motor vehicles to parking facilities on or within the Mortgaged Premises, and all easements now or hereafter affecting same, royalties and all rights appertaining to the use and enjoyment of the Mortgaged Premises, including, without limitation, alleys, drainage, sewer, mineral, water, oil and gas rights, rights-of-way, vaults, ways, passages, water courses, water rights and powers, and all estates, rights, titles, interests, reversionary interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Mortgaged Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto and the reversion and reversions, remainder and remainders thereof.

D. The term “**Mortgaged Property**” shall mean both the Mortgaged Premises and the Collateral.

E. The term “**Note**” shall mean that one certain Secured Promissory Note of even date herewith in the original principal amount of \$34,000,000.00 executed by Trustor and made payable to the order of Beneficiary, payable with interest in installments as stipulated therein and providing for the right to declare the unpaid principal balance due and payable upon the occurrence of an Event of Default (as defined herein) and otherwise as provided therein and providing for reasonable attorneys’ fees, and any and all notes given in renewal, extension, modification, increase, consolidation or rearrangement of said Note or any portion thereof. The maturity date of the Note is August 15, 2023.

F. The term “**Loan Agreement**” shall mean that certain Construction Loan Agreement of even date herewith executed by Trustor and Beneficiary concerning the Note.

G. The term “**Guarantor**” shall mean, individually and collectively, John R. Thackeray, Thackeray Family Holdings II, LLC and Kevin S. Garn.

H. The term “**Completion Guaranty**” shall mean that certain Absolute, Unconditional Completion Guaranty of even date herewith executed by Guarantor in favor of Beneficiary with respect to the Note.

I. The term “**Payment Guaranty**” shall mean that certain Absolute, Unconditional Payment and Performance Guaranty of even date herewith executed by Guarantor in favor of Beneficiary with respect to the Note.

J. The term “**Guaranty**” shall mean, individually and collectively, the Payment Guaranty and the Completion Guaranty.

K. The term “**Loan Documents**” shall mean, individually and collectively, this Deed of Trust, the Note, the Loan Agreement, the Payment Guaranty, the Completion Guaranty and all

other documents evidencing, securing or relating to the Note.

L. The terms “**attorneys’ fees**”, “**attorneys’ fees and expenses**”, “**costs and expenses of enforcement**” and other terms of similar import shall mean and include support staff costs as an element of reasonable attorneys’ fees, and the amounts expended in litigation preparation and computerized research, telephone and telefax expenses, mileage, depositions, postage, photocopies, process service, video tapes and the like as part of the reasonable costs of collection and enforcement, and any and all costs associated with environmental testing, audits, reviews, inspections, remediation and clean-up and any other costs associated with preparing the Mortgaged Property for sale as part of the costs of foreclosure and/or enforcement.

M. The term “**MDA**” shall mean that certain Master Development Agreement dated as of February 17, 2016 by and between TGC SoJo Partners, LLC, a Utah limited liability company (“**Master Developer**”) and Utah Transit Authority, a transit district organized under the Utah Public Transit District Act (“**UTA**”), as assigned in part by Master Developer to Trustor pursuant to that certain Assignment and Assumption Agreement dated on or about the same date hereof by and between Master Developer, as Assignor and Trustor, as Assignee.

N. The term “**Master Parking Agreement**” shall mean that certain Parking Management Agreement dated on or about June 16, 2016 by and between UTA, SoJo Station North, LLC, a Utah limited liability company, SoJo Station South, LLC, a Utah limited liability company, SoJo Station Parking Inc., a Utah corporation and Trustor.

II. CONVEYANCE IN TRUST

In consideration of Ten and 00/100 Dollars (\$10.00) cash in hand paid, of Beneficiary’s advancing or extending to Trustor the funds or credit constituting a part of the Indebtedness, and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Trustor hereby conveys to Trustee the above-described Mortgaged Property, in trust, with power of sale, for the purpose of securing the Indebtedness, and the full and complete performance of each and every obligation, covenant, duty and agreement of Trustor contained herein or in the Note or any other document executed by Trustor pertaining to the Note or as security therefor; TO HAVE AND TO HOLD the Mortgaged Property, together with the rights, privileges and appurtenances thereto belonging unto the Trustee and his substitutes or successors forever, and Trustor is hereby bound to warrant and forever defend the Mortgaged Property unto the Trustee, his substitutes or successors and their assigns, against the claims of all persons claiming any interest in the Mortgaged Property or any part thereof save and except only these items identified on **Exhibit “B”** attached hereto and incorporated herein for all purposes (the “**Permitted Exceptions**”).

III. ADDITIONAL SECURITY

As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of Trustor contained herein or contained in

any other document executed by Trustor pertaining to the Note or the security therefor:

A. Security Interest. Trustor hereby grants and conveys, jointly and severally, to Beneficiary a security interest in and lien on all of the Collateral. This Deed of Trust shall serve as a Security Agreement created pursuant to the Utah Uniform Commercial Code, as may be amended from time to time (the "UCC"), and Beneficiary shall have and may exercise all rights, remedies and powers of a secured party under the UCC. Trustor hereby represents, warrants and covenants that (1) Trustor is the owner and holder of the Collateral free and clear of any adverse claim, security interest or encumbrance, except those created herein; (2) Trustor will defend, jointly and severally, the Collateral, and the priority of the security interest created herein as a valid first security interest against all claims and demands of any person at any time claiming the same or any interest therein; (3) there are no financing statements by Trustor, as debtor, now on file in any public office except those financing statements which are being released contemporaneously with the delivery of this transaction or which have been authorized by Beneficiary; (4) Trustor authorizes Beneficiary to file or record such other and further agreements, financing statements and assignments in such offices and at such times as it is deemed by Beneficiary to be necessary or desirable; and (5) Trustor will execute and deliver to Beneficiary such other and further agreements, financing statements and assignments as Beneficiary may request.

This Deed of Trust is intended to constitute a fixture filing in accordance with the applicable provisions of the UCC. The debtor is Trustor and the secured party is Beneficiary and their addresses are those set forth at the beginning of this Deed of Trust. Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the UCC), and this Deed of Trust, upon being filed for record in the real estate records wherein the Mortgaged Premises are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of UCC upon such Mortgaged Property that is or may become fixtures.

B. Assignment of Condemnation Awards. To the extent of the full amount of the Indebtedness secured hereby and of the cost and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Beneficiary in the collection of any award or payment, Trustor hereby assigns to Beneficiary any and all of Trustor's right, title and interest in and to any and all awards or payments, including, without limitation, all interest thereon, together with the right to receive the same, which may be made with respect to the Mortgaged Property as a result of (1) the exercise of the right of eminent domain; (2) the alteration of the grade or of any street; or (3) any other injury to or decreased value in the Mortgaged Property, as well as the right, but not the obligation, to, at Trustor's expense, participate in and make decisions concerning the progress of any proceeding involving any such award or payment. Trustor shall give Beneficiary written notice of any such action or proceeding immediately upon Trustor's becoming aware of same. All such damages, condemnation proceeds and consideration shall be paid directly and solely to Beneficiary whether or not an Event of Default has at such time occurred, and after first applying said sums to the payment of all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Beneficiary in obtaining

such sums, Beneficiary may, at its option, apply the balance on the Indebtedness, in any order and whether or not then due, without prepayment or penalty, or to the restoration of the Mortgaged Property, or release the balance to Trustor provided, however, that said application or release shall not cure or waive any default.

IV. ABSOLUTE ASSIGNMENT OF RENTS

In further consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns to Beneficiary any and all rents, revenues, profits and incomes from the Mortgaged Property or any portion thereof; provided, however, that, so long as no Event of Default has occurred, Trustor is hereby granted a license to collect and retain the currently accruing rents, revenues, profits and incomes from the Mortgaged Property, but in no event may Trustor collect same for more than one (1) month in advance of the date upon such amounts become due (except for advance bookings and deposits collected in good faith in the ordinary course of business from unrelated third parties). If an Event of Default shall occur, however, thereupon, and at any time thereafter such default is continuing, Beneficiary may terminate such license and may, without any liability to Trustor, take possession and control of the Mortgaged Property and/or receive and collect all rents, revenues, profits and incomes, accrued or accruing thereafter so long as any of the Indebtedness remains unpaid, applying so much thereof as may be collected first to the expenses incident to taking possession and/or the collection thereof, and second to the payment of the Indebtedness other than the Note and third to the amount of the Note then remaining unpaid, at Beneficiary's discretion, either principal or interest, in any order, and whether then matured or not, paying the balance, if any, to Trustor. It is intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only, and that Beneficiary shall be entitled to exercise its rights hereunder whether or not Beneficiary is in possession of the Mortgaged Property at such time. Trustor agrees to fulfill or perform each and every covenant of any and all leases and guaranties of leases of the Mortgaged Property so as to keep them at all times in full force and effect. Trustor agrees not to enter into any new lease and not to make any modification, consent to any modification of, or cancel, terminate or consent to the surrender of any lease or any guaranty of such lease after such lease or guaranty has been executed by Trustor and the lessee or guarantor, as applicable, without the prior written consent of Beneficiary. The failure to fulfill or perform any such covenant or the making of or consent to any such modification or cancellation, termination or surrender in violation of this provision shall be an Event of Default. Nothing contained in this Deed of Trust or in any other document securing, evidencing or relating to the Indebtedness shall preclude Beneficiary from taking any action to cure or remedy any default of Trustor under any lease of all or any portion of the Mortgaged Property or any guaranty of lease, or any act, omission or occurrence which but for the passage of time, the giving of notice or both, would be a default under any such lease or guaranty of lease or take any other action in connection therewith and any amounts expended by Beneficiary in connection with such cure or remediation including, without limitation, reasonable attorneys' fees and expenses, shall be an advance under and secured by this Deed of Trust and shall be included in the Indebtedness and shall be paid by Trustor to Beneficiary on demand. The preceding sentence shall not be construed to obligate Beneficiary to cure any such actual or

potential lease defaults or any such actual or potential guaranty of lease defaults. In the event that any provision of this Article IV conflicts or is inconsistent with that certain Absolute Assignment of Leases and Rents of even date herewith executed by Trustor and further securing the Note, the terms of such Assignment of Leases and Rents shall control.

V. TRUSTOR'S REPRESENTATIONS AND WARRANTIES

In order to induce Beneficiary to lend the funds evidenced by the Note, Trustor represents and warrants that:

A. Accurate Loan Information. Any and all information and financial statements furnished or to be furnished to Beneficiary by or on behalf of Trustor in connection with the Indebtedness secured by this Deed of Trust is or at the time of delivery will be complete and accurate in all material respects.

B. Valid Title. Trustor is the lawful owner of the Mortgaged Property and has good right and lawful authority to mortgage, hypothecate and pledge the same.

C. Freedom from Encumbrances. The Mortgaged Property is free from any and all liens and encumbrances save and except only the Permitted Exceptions, and Trustor does warrant and will defend title to the Mortgaged Property against any and all claims or demands by third parties whatsoever save and except only the Permitted Exceptions.

D. Maintenance of Lien Priority. Trustor shall take any and all steps as are necessary to preserve and protect the validity and priority of the liens on the Mortgaged Property created hereby. Trustor shall execute, acknowledge and deliver such additional documents or instruments as Beneficiary may deem necessary in order to preserve, protect, continue, extend or maintain the liens and security interests created hereby as first liens on the Mortgaged Property. Any and all costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the security interest and the liens herein created as valid first and subsisting liens shall be paid in full by Trustor.

E. Value of the Mortgaged Property. Trustor acknowledges that the value of the Mortgaged Property, based solely on an appraisal submitted to Trustor and provided to Beneficiary, is substantially in excess of the Indebtedness secured hereby. Trustor acknowledges but for the Mortgaged Property having a value in excess of the amount of the Indebtedness, Beneficiary would not make the loan evidenced by the Note and advance the funds hereunder. Trustor agrees that Beneficiary shall at all times have the benefit of the Mortgaged Property as the security for the Indebtedness even though the value thereof may now or in the future exceed the amount of the Indebtedness secured hereby.

F. Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants that:

(1) Trustor is a Utah limited liability company created under that certain Certificate of Organization dated on or about September 8, 2015 (the “**Certificate**”) and that certain Amended and Restated Operating Agreement of SoJo Hotel Partners, LLC dated as of September 8, 2015 (the “**Operating Agreement**”; with the Certificate, individually and collectively, the “**Governing Documents**”).

(2) (a) The sole members of Trustor are: (i) Utah Transit Authority, a transit district organized under the Utah Public Transit District Act, Utah Code Ann. §§ 17B-2a-801 *et seq.*; (ii) SoJo Hotel Investment Partners, LLC, a Utah limited liability company; and (iii) TGC SoJo Hotel Partners, LLC, a Utah limited liability company; and (b) the sole Manager of Trustor is TGC SoJo Partners, LLC, a Utah limited liability company (“**Manager**”).

(3) John R. Thackeray and Kevin S. Garn, as the Managers of Manager are, together, authorized to execute and deliver the Note, the Loan Agreement, this Deed of Trust and all other Loan Documents, including but not limited to renewals, extensions, modifications, increases, consolidations and rearrangements of the Note, the Loan Agreement and this Deed of Trust, and no signature or any other action of any other persons or entities shall be required to bind Trustor.

(4) Trustor will not modify, amend or terminate any of the Governing Documents in any way adverse to Beneficiary.

(5) Except as may otherwise be allowed for hereunder, Trustor shall not permit any interest of any member to be sold, transferred, conveyed, encumbered or diluted, or make any modification of the Operating Agreement which would adversely affect Beneficiary.

(6) Trustor is and shall continue to be, (a) duly organized and existing under the laws of the State in which it is formed, and (b) duly qualified to transact business in each State where the conduct of its business requires it to be qualified.

G. **Construction and Materials.** Trustor hereby warrants, represents and covenants that no construction has commenced on or at the Mortgaged Property with respect to the construction contemplated to be performed under the Loan Agreement by, through or under Trustor or otherwise at Trustor’s direction or request at any time prior to the date of this Deed of Trust.

H. **Hazardous Waste.** Trustor hereby represents and warrants that, after due and diligent inquiry, Trustor is not aware of any facts or circumstances which may give rise to any litigation, proceedings, investigations, citations or notices of violations resulting from the use, presence, generation, manufacture, storage, discovery or disposition of, on, under or about the Mortgaged Premises or the transport to or from the Mortgaged Premises of any Hazardous Materials (as defined below) (other than permitted legal amounts). Trustor hereby represents and warrants that, to the best of its actual knowledge, except as may be disclosed in any environmental reports delivered to Beneficiary prior to the date hereof, the Mortgaged Premises

is not in violation of and Trustor covenants and agrees not to use or permit the use of the Mortgaged Premises for any purpose which would be in violation of, any federal, state or local health or environmental statute, regulation, rule, ordinance or publication which is presently in effect or that may be promulgated in the future, as such statutes, regulations, ordinances and publications may be amended from time to time relating to Hazardous Materials, including, without limitation, with respect to industrial hygiene or to health or environmental conditions on, under or about the Mortgaged Premises (including, but not limited to, soil and ground water conditions) or with respect to the owner's or occupant's thereof. The foregoing representations and warranties shall survive foreclosure under this Deed of Trust and shall constitute continuing representations and warranties to Beneficiary, and its successors and assigns, as to conditions existing prior to foreclosure or a deed in lieu of foreclosure only. The term "**Hazardous Materials**" as used in this Deed of Trust shall include, but not be limited to:

- (1) petroleum, petroleum based products and oil;
- (2) asbestos of any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls (pcb);
- (3) tanks, whether empty, filled or partially filled with any substance, material, chemical or other waste;
- (4) any substance, material, chemical or other waste including, without limitation, any explosive, flammable substances, explosives or radioactive materials, hazardous or toxic waste, hazardous or toxic materials, hazardous, toxic or radioactive substances, contaminants or pollutants and any of the preceding which are defined as or included in the definition of "Hazardous Substance", "Hazardous Waste", "Hazardous Material" or "Toxic Substance" or other similar or related terms under any applicable local, state or federal statute, regulation, ordinance or publication, as such statutes, regulations, ordinances and publications may be amended from time to time (individually and collectively the "Environmental Laws"), including but not limited to the statutes listed below including but not limited to:
 - (a) the Resource Conservation and Recovery Act of 1976 (commonly referred to as the Solid Waste Disposal Act), 42 U.S.C. sec. 6901 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub.L. No. 99-499, 100 Stat. 1613;
 - (b) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. sec. 9601 et seq.;
 - (c) the Clean Air Act, 42 U.S.C. sec. 7401 et seq.;
 - (d) the Water Pollution and Prevention and Control Act (commonly referred to as the Clean Water Act), 33 U.S.C. sec. 1251 et seq.;

et seq.;

(e) the Hazardous Materials Transportation Act, 49 U.S.C. sec. 5101

sec. 136 et seq.;

(f) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.

(g) the Toxic Substances Control Act, 15 U.S.C. sec. 2601 et seq.;

(h) the Safe Drinking Water Act, 42 U.S.C. sec. 300(f) et seq.; and

(i) any and all statutes, regulations, rules and ordinances under the laws of the State of Utah governing and regulating Hazardous Materials or other environmental matters, as such statutes, regulations, ordinances and publications may be amended from time to time; and

(5) any other material, substance, chemical or other waste, exposure to which is prohibited, limited or regulated from time to time by any federal, Utah or local statute, regulation, ordinance or publication or may pose a hazard to health or is related to the industrial hygiene or environmental conditions of the Mortgaged Property or any other adjacent or nearby property.

NOTWITHSTANDING ANY NON-RECOURSE LANGUAGE IN THE NOTE OR THIS DEED OF TRUST, Trustor hereby agrees, jointly and severally, to INDEMNIFY AND HOLD HARMLESS Beneficiary, and all of its directors, officers, employees, attorneys, contractors and agents, and any successors and assigns, their directors, officers, employees, and agents (individually and collectively the “**Indemnitees**”), from and against any and all loss, damage, expense or liability (including reasonable attorney’s fees and investigatory expenses) incurred arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials on or about the Mortgaged Property by Trustor, its present tenants or any future tenants, any prior owner, operator or tenant of the Mortgaged Property, or any third party, including, without limitation, (i) all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, occurrence, generation, storage, transportation or disposal of Hazardous Materials by Trustor, past, present or future tenants, owners or operators of the Mortgaged Property, or any third party, and (ii) the cost of any required or necessary repair, cleanup or detoxification, claimed, threatened or asserted against any such Indemnitees; SUCH INDEMNIFICATION AND HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF ANY INDEMNITEES AND FOR ANY ACTION OR OCCURRENCE FOR WHICH THE INDEMNITEES MAY INCUR STRICT LIABILITY, but such indemnity and hold harmless shall not apply with respect to any Hazardous Substances which first occurred on the Mortgaged Property after any foreclosure of this Deed of Trust or conveyance in lieu thereof or to the extent that such loss, damage, expense or liability is caused by or attributable to such Indemnitees’ negligence or willful misconduct. Trustor’s obligations pursuant to the foregoing

indemnification and agreement to hold harmless shall survive any termination of the estate created by this Deed of Trust whether as a result of the exercise by Beneficiary of any default remedies available to it at law or in equity or otherwise. Trustor acknowledges and agrees that as a condition precedent to making the loan to Trustor evidenced by the Note secured by this Deed of Trust, Beneficiary has required that Trustor provide to the Indemnitees the indemnification and agreement to hold harmless set forth herein, and that Beneficiary would not consummate the Loan without this indemnification and hold harmless and that the indemnification and agreement to hold harmless contained herein is a material inducement for Beneficiary's agreement to make the Loan. Further, Trustor agrees that the foregoing indemnification and agreement to hold harmless is separate, independent of and in addition to its undertakings as "Maker" under the Note, as "Trustor" under this Deed of Trust, as "Assignor" under the Absolute Assignment of Leases and Rents and under any and all other documents, agreements and undertakings executed by Trustor in favor of Beneficiary pursuant to the Note. Trustor agrees that a separate action may be brought to enforce the provisions of this indemnification and agreement to hold harmless, which shall in no way be deemed to be an action on the Note or under this Deed of Trust, whether or not Beneficiary would be entitled to a deficiency judgment following a foreclosure sale of the Mortgaged Property.

Except as otherwise disclosed to Beneficiary in writing, to Trustor's knowledge, the present use and occupancy of the Mortgaged Property do not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind, including, without limitation, Environmental Laws, zoning, building, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not and if a third-party is required under any covenants, conditions and restrictions of record or any other agreement to consent to the use and/or operation of the Mortgaged Property, Trustor has obtained such approval from such party;

To Trustor's knowledge, the Mortgaged Property has never been used, nor has Trustor used the Mortgaged Property, for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any Hazardous Materials during Trustor's or Trustor's affiliates' ownership of the Mortgaged Property. Except as disclosed in the Environmental Report, no Hazardous Materials, to Trustor's knowledge, exist on or under the Mortgaged Property or in any surface water(s) or groundwater(s) on or under the Mortgaged Property. Except as may be disclosed in the Environmental Report, to Trustor's knowledge, the Mortgaged Property and its prior uses have at all times, during Trustor's or Trustor's affiliates' ownership of the Mortgaged Property, complied with all Environmental Laws, and Trustor has not violated, and will not violate, any Environmental Laws;

There are no facilities on the Mortgaged Property which are subject to reporting under any State laws or Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. sec. 11022), and federal regulations promulgated thereunder. The Mortgaged Property does not contain any underground storage tanks.

I. Matters with the MDA. Trustor shall at all times act in a manner so as not to

violate any of the terms and conditions of the MDA. Further, Trustor shall cause Master Developer to take all such steps as are reasonably necessary to ensure that Master Developer does not terminate or act in a manner that causes the UTA to terminate the MDA and its application against the Mortgaged Property.

VI. ADDITIONAL COVENANTS OF TRUSTOR

As long as any of the Indebtedness remains unpaid, Trustor, jointly and severally, covenants and agrees that:

A. Payment of Indebtedness. Trustor shall pay the Indebtedness promptly when due and payable.

B. Payment of Taxes and Other Assessments. Subject to Section VI(D) below, Trustor will pay, or cause to be paid, prior to delinquency all taxes, assessments and other governmental, municipal or other public dues, charges, fines, or impositions imposed or levied upon the Mortgaged Property or on the interest created by this Deed of Trust, or any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the interest created by this Deed of Trust (such amounts, collectively, the "Taxes and Assessments" or each a "tax" or an "assessment"), and promptly but no later than ten (10) business days after said taxes, assessments and other governmental charges would be delinquent will exhibit receipts therefor to Beneficiary. If any Taxes and Assessments are levied, assessed or imposed on Beneficiary as a legal holder of the Note or any interest in the documents securing, evidencing or relating to the Note by any governmental authority (excluding any income, excess profits or similar taxes imposed on Beneficiary's income generally), then unless all such taxes are paid by Trustor as they become due and payable and in the opinion of Beneficiary, such payment by Trustor is lawful and does not place Beneficiary in violation of any law, Beneficiary may, at its option, after thirty (30) days written notice to Trustor, declare the Indebtedness immediately due and payable. Trustor may in good faith contest, by proper legal proceedings, the validity or amount of any tax, assessment, charge or levy which Trustor has agreed to pay pursuant to the provisions of this Deed of Trust, and may delay payment, performance or discharge thereof during the period in which the same is being contested to the extent such delay is legally permitted; provided, however, that if payment, is delayed: (a) such proceedings shall suspend the collection thereof from Trustor, Beneficiary and the Mortgaged Property; (b) in any such event Trustor shall deposit with Beneficiary, as security for the payment or discharge of such contested item, an amount equal thereto plus interest, penalties, and costs; (c) such contested item and all costs and penalties, if any, shall have been paid at least thirty (30) days before the date on which the Mortgaged Property, or any portion thereof, may be sold in order to satisfy any such contested items; and (d) in the case of any matter for which criminal or civil liability might accrue to Trustor, Beneficiary would not be in violation of any civil or criminal law or otherwise in any danger of any criminal or civil liability for failure to comply therewith.

C. Insurance. From and after the occurrence of Completion of the Improvements, Trustor, at its expense, shall keep the Mortgaged Property insured against loss or damage by fire, windstorm, special form causes of loss, boiler and machinery written on a comprehensive form, flood (in the event any of the Mortgaged Premises is within a 100-year flood plain and flood insurance is available pursuant to the United States Flood Disaster Protection Act of 1973 or any similar or successor statute or successor governmental authority), vandalism, malicious mischief and such other causes of loss, casualties or other contingencies and in such amounts (but in no event less than the greater of the amount of the Indebtedness or the full replacement value thereof on an agreed value basis) as from time to time may be reasonably required by Beneficiary, and maintain business income and extra expense insurance as to all of the property, boiler and machinery and flood coverages in an amount at least equal to twelve (12) months' principal and interest installments on the Note and together with twelve (12) months' property taxes, ground lease rents and insurance premiums, with respect to the Mortgaged Property covering the risk of loss due to the occurrence of any of the foregoing hazards, in each case and in such amounts, in such manner and in such companies as Beneficiary may reasonably approve but in no event shall Beneficiary be required to approve any company that does not at least have an A. M. Best rating of "A-" or better and a financial rating of X or better), and all such policies shall contain a waiver of subrogation and provide that any losses payable thereunder shall (pursuant to standard mortgagee clauses without contribution, including one providing that such insurance as to the interest of Beneficiary shall not be invalidated by any act or omission or neglect of Trustor, to be attached to each policy) be payable to Beneficiary. Trustor shall cause duplicate originals or a copy certified as being true and correct by Trustor of any and all such insurance policies to be deposited with Beneficiary. Trustor, at its expense, will also carry commercial general liability insurance, in such form, amounts and with such companies as Beneficiary may from time to time reasonably require, with Beneficiary included thereon as an additional insured or as otherwise required by Beneficiary. Any or all of such policies may be provided under a blanket policy or policies provided such blanket policies allocate the amount of insurance required hereunder to the Mortgaged Property and such blanket policies are otherwise in a form and substance acceptable to Beneficiary. Trustor shall cause duplicate originals, copies certified as being true and correct by Trustor, or certificates of the insurers under such policies evidencing same, of any and all such insurance policies to be deposited with Beneficiary. Unless funds are being escrowed for such premiums at least ten (10) days prior to the date the premiums on each such policy or policies shall become due and payable, Trustor shall furnish to Beneficiary evidence of the payment of such premiums. Each of such policies shall contain an agreement by the insurer that the same shall not be canceled or modified without at least ten (10) days' prior written notice to Beneficiary. In the event of loss under any such policy, Trustor shall give prompt written notice to the insurance carrier and to Beneficiary. With respect to all insurance policies except commercial general liability insurance, Beneficiary is hereby authorized, but not required, on behalf of and at the expense of Trustor, whether or not an Event of Default has occurred, to make proof of loss, to collect for, adjust or compromise any losses under any insurance policy on the Mortgaged Property, to appear in and prosecute any action arising from any of such insurance policies, and, subject to the provisions in Section X(A) below, to apply, at Beneficiary's option, the loss proceeds (less expenses of collection) on the Indebtedness, in any order and whether due or not, or to the restoration of the Mortgaged

Property, or to be released to Trustor, but any such application or release shall not cure or waive any default. In case of a sale pursuant to the foreclosure provision hereunder, or any conveyance of all or any part of the Mortgaged Property in extinguishment of the Indebtedness, complete title to all insurance policies on or related to the Mortgaged Property, and the unearned premiums of same shall pass to and vest in the purchaser or grantee of the Mortgaged Property to the extent permitted by such insurance policies since it is intended that all such items are a part of the "Collateral" as defined herein. TRUSTOR IS FREE TO OBTAIN INSURANCE THROUGH ANY INSURER OR PRODUCER OF TRUSTOR'S CHOICE, SUBJECT TO THE RIGHT OF BENEFICIARY TO REASONABLY REJECT AN INSURER OR PRODUCER.

D. Escrow for Taxes and Insurance. The requirements for escrows for taxes and insurance have been conditionally waived by Beneficiary so long as no Termination of Escrow Waiver Event occurs. A "**Termination of Escrow Waiver Event**" means one or more of the following: (i) an Event of Default has occurred; (ii) any Taxes and Assessments is not paid prior to delinquency, unless being contested in accordance with Section VI(B) above, or any premium to maintain the insurance required in this Beneficiary is not paid when due; or (iii) Trustor does not own the Mortgaged Property unless the subject loan has been assumed by a borrower approved in writing by Beneficiary, in Beneficiary's sole and absolute discretion. If a Termination of Escrow Waiver Event occurs, thereafter Trustor shall pay, in addition to the installments payable under the Note, on the same day as such installments are due and payable, a sum equal to 1/12th of the estimated annual taxes and hazard, business interruption and other insurance premiums required hereunder, and special assessments, if any, next due on the Mortgaged Property. If the amount so paid is not sufficient to pay such taxes, insurance premiums and assessments when due, then Trustor will immediately deposit with Beneficiary amounts sufficient to pay the same. Funds deposited by Trustor pursuant to this provision shall be used to pay such taxes, insurance premiums and assessments when due, provided that Trustor has furnished Beneficiary with all tax statements, premium notices and other such notices at least thirty (30) days prior to the date that any such taxes, premiums and assessments may be due. If there is an Event of Default under this Beneficiary, Beneficiary may elect, at any time after such Event of Default, to apply the funds accumulated under this provision against the Indebtedness in any manner or order. No interest shall accrue or be allowed on any payments under the provisions of this paragraph. Beneficiary shall not be required to deposit or hold monies in an account special or separate from its general funds. Trustor expressly releases Beneficiary from any liability to Trustor arising out of the maintenance by Beneficiary of an escrow as provided herein or for payment of any sums out of such escrow. Trustor, jointly and severally, further indemnifies Beneficiary against claims arising out of payment of taxes or insurance premiums where Trustor has failed to provide Beneficiary with tax statements and premium notices as required hereby. The maintenance by Beneficiary of an escrow for Taxes and Assessments and insurance shall not relieve Trustor of its obligations under this Beneficiary respecting Taxes and Assessments and insurance on the Mortgaged Property if such escrow is insufficient or otherwise applied as provided in accordance with this Beneficiary.

A charge of \$200.00 per month for administration expenses shall be assessed against Trustor for each successive month that all paid tax receipts and insurance policies are not

delivered to Beneficiary within thirty (30) days after notice to Trustor of failure to deliver such documents.

E. **FF&E Replacement Reserve.** Trustor shall establish and maintain in an account to be held by Beneficiary at all times while the Note is outstanding, a reserve for furnishings, fixtures and equipment, which account shall include interest, if any, and dividends, if any, accrued thereon (the "**FF&E Replacement Reserve**"), for payment of certain replacement for furnishings, fixtures and equipment expenses, incurred by Trustor in connection with the Hotel that constitutes a part of the Improvements (collectively, the "**FF&E Replacements**"). The FF&E Replacement Reserve constitutes Collateral as such term is defined in this Deed of Trust, and Trustor intends that Beneficiary shall hold and have a perfected security interest in the FF&E Replacement Reserve in first lien position,. In addition to the monthly payments due under the Note, commencing in the first loan year, as such term is defined in the Note, and continuing in each loan year thereafter until the Note and all other indebtedness secured hereby is fully paid and performed, on the same date that each combined monthly installment of principal and interest is due under the Note, Trustor shall pay to Beneficiary a deposit to the FF&E Replacement Reserve in the amount equal to CIR Percentage (defined below) of all gross revenue from the Mortgaged Property (the "**Gross Hotel Revenues**") for the month just ended, which deposits shall be made monthly on or before the fifteenth (15th) day of the following calendar month. The term "**CIR Percentage**" means two percent (3%) in the second loan year, three percent (3%) in the fourth loan year and four percent (4%) in each loan year thereafter. All sums in the FF&E Replacement Reserve shall be held by Beneficiary in the FF&E Replacement Reserve to pay the costs and expenses of FF&E Replacements and as additional collateral for the Indebtedness. Provided there is no Event of Default or an event which, with notice or the passage of time, or both, could result in an Event of Default by Trustor under the Note, this Deed of Trust, this Deed of Trust or any of the other Loan Documents, from and after the fourth loan year Beneficiary shall, to the extent funds are available for such purpose in the FF&E Replacement Reserve and Beneficiary has approved such disbursements in writing in advance in Trustor's reasonable discretion, disburse to Trustor the amount paid or incurred by Trustor in performing such FF&E Replacements within ten (10) business days following: (a) the receipt by Beneficiary of a written request from Trustor for disbursement from the FF&E Replacement Reserve and a certification from Trustor that the applicable portion of the FF&E Replacements for which a disbursement is requested has been completed; (b) the delivery to Beneficiary of invoices, receipts or other evidence satisfactory to Beneficiary, verifying the cost of performing the FF&E Replacements; (c) for disbursement requests in excess of \$25,000.00, the delivery to Beneficiary of affidavits, lien waivers or other evidence reasonably satisfactory to Beneficiary showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Hotel or other Mortgaged Property have been paid all amounts due for labor and materials furnished to the Property; (d) for disbursement requests in excess of \$25,000.00, delivery to Beneficiary (unless expressly waived in writing by Beneficiary for a particular request or group of requests) of a certification from an inspecting architect or other third party acceptable to Beneficiary describing the completed reconstruction or replacement of such FF&E Replacements and verifying the completion of reconstruction or replacement of such FF&E Replacements and

the value of the completed reconstruction or replacement of such FF&E Replacements; (e) if applicable, at the completion of any such work, delivery to Beneficiary of a new certificate of occupancy for the portion of the improvements covered by reconstruction or replacement of such FF&E Replacements, if said new certificate of occupancy is required by law, or if not, a certification by Trustor that no new certificate of occupancy is required; (f) such pictures of the of such FF&E Replacements as are reasonably required by Beneficiary; and (g) receipt by Beneficiary of an administrative fee in the amount of \$250.00. Beneficiary shall not be required to make advances from the FF&E Replacement Reserve more frequently than once in any thirty (30) day period. In making any payment from the FF&E Replacement Reserve, Beneficiary shall be entitled to rely on such request from Trustor without any inquiry into the accuracy, validity or contestability of any such amount. The FF&E Replacement Reserve shall be held by Beneficiary in an unsegregated account without interest. The FF&E Replacement Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this Section VI(E) in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the FF&E Replacement Reserve are inadequate to pay the cost of the FF&E Replacements, Trustor shall pay the amount of such deficiency. Upon assignment of the Note by Beneficiary, any funds in the FF&E Replacement Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. If there is an Event of Default under the Note, this Deed of Trust or any other Loan Document, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the FF&E Replacement Reserve against the Indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the FF&E Replacement Reserve shall be deemed to cure any default by Trustor or Event of Default under the Note, this Deed of Trust or any other Loan Document. Within fifteen (15) days after full payment of the Indebtedness secured hereby in accordance with its terms or at such earlier time as Beneficiary may elect, the balance of the FF&E Replacement Reserve then in Beneficiary's possession shall be paid over to Trustor and no other party shall have any right or claim thereto. Trustor shall furnish FF&E Replacement Reserve accounting information relating to the Mortgaged Property to Beneficiary, in form and content satisfactory to Beneficiary, which shall include, without limitation, a reconciliation of cash flows for the period covered, not later than one hundred twenty (120) days after the end of the end of each calendar year. Such FF&E Replacement Reserve accounting will contain Trustor's certification that, during the period of time covered by the particular statement (A) no funds have been expended for items not generally considered to be "furnishings, fixtures and equipment" in the sense of normal accounting terminology for hotel properties, and (B) at least four percent (4%) of Gross Hotel Revenues has been deposited in the FF&E Replacement Reserve. Upon the occurrence and during the continuation of an "Event of Default", Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the FF&E Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the FF&E Reserve shall be deemed to cure any default by Trustor or Event of Default under the Loan Agreement, the Note, this Deed of Trust or any other Loan Documents. As used in this Section VI(E), the term "**Gross Hotel Revenues**" shall mean the gross revenues of any and all kind or nature attributable to the operations of the Hotel, from cash, barter and credit transactions

and computed on an accrual basis (before commissions and discounts for credit cards, prompt or cash payments), including the proceeds of any business interruption insurance or other loss of income insurance attributable thereto, and excluding only sales or room taxes, or tips payable to Hotel employees.

F. PATRIOT Act.

(1) As of the date of this Deed of Trust, Trustor is and, during the term of this Deed of Trust shall remain, in full compliance with all the applicable laws and regulations of the United States of America that prohibit, regulate or restrict financial transactions, including but not limited to, conducting any activity or failing to conduct any activity, if such action or inaction constitutes a money laundering crime, including any money laundering crime prohibited under the Money Laundering Control Act, 18 U.S.C. 1956, 1957, or the Bank Secrecy Act, 31 U.S.C. 5311 et seq. and any amendments or successors thereto and any applicable regulations promulgated thereunder.

(2) Trustor represents and warrants that: (i) neither it, nor any of its Constituent Owners (as defined below), or any officer, director, member, manager, partner or employee, is or will become named as a “Specially Designated National and Blocked Person” as designated by the United States Department of the Treasury’s Office of Foreign Assets Control or as a person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; (ii) it is not owned or controlled, directly or indirectly, by the government of any country that is subject to a United States Embargo; (iii) it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a “Specially Designated National and Blocked Person,” or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that it is not engaged in this transaction directly or indirectly on behalf of, or facilitating this transaction directly or indirectly on behalf of, any such person, group, entity or nation; (iv) no funds will be used to make any payments due hereunder or pursuant to the Note which were obtained directly or indirectly from a Specially Designated National and Blocked Person or otherwise derived from a country that is subject to a United States Embargo; and (v) no current or future tenant (for purposes of this Section VI(F), “tenant” shall not include Hotel guests and customers) of any portion of the Mortgaged Property, nor any officer, director, member, manager, partner or Constituent Owner of such tenant, is or will become named a Specially Designated National and Blocked Person; provided that, in the event that a tenant of any portion of the Mortgaged Property is a publicly-traded company whose shares are listed on a national stock exchange, such representation and warranty shall not apply to shareholders of such tenant.

(3) Trustor acknowledges that it understands and has been advised by legal counsel on the requirements of the applicable laws referred to above, including the Money Laundering Control Act, 18 U.S.C. 1956, 1957, the Bank Secrecy Act, 31 U.S.C. sec. 5311 et seq., the applicable regulations promulgated thereunder, and the Foreign Assets Control

Regulations, 31 C.F.R. sec. 500 5311 et seq.

(4) Trustor shall notify Beneficiary immediately upon receipt of any information indicating a breach of this Section VI(F) or if Trustor or any officer, director, member, manager, employee or Constituent Owner of Trustor is custodially detained on charges relating to money laundering, whereupon Beneficiary shall be entitled to take all actions necessary so that Beneficiary is in compliance with all Anti-Money Laundering Regulations. Any and all loss, damage, liability, penalty, fine or expense (including reasonable attorney's fees and investigatory expenses) incurred by Beneficiary in connection therewith, including but not limited to attorney's fees, shall be included in the Indebtedness secured hereunder and shall immediately be due and payable by Trustor to Beneficiary.

G. Waste, Demolition, Alteration or Replacement. Trustor will cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Mortgaged Premises, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, conditioned or delayed, and will comply with any and all laws, rules and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and will at any time and from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained; provided, however, that in the event of a casualty loss or governmental taking, said duty of repair and restoration shall be conditioned upon Beneficiary's consent to all insurance or condemnation proceeds, respectively, to be used toward such repair or restoration, but Trustor's duties shall not be excused in the event that the insurance coverage for the Mortgaged Property is inadequate to fully fund such repair or restoration. Trustor agrees not to remove any of the fixtures or personal property included in the Mortgaged Property without the prior written consent of Beneficiary unless immediately replaced with like-kind property of at least equal value. Trustor shall act as necessary to continue or cause the continuance of such income producing activity as is presently conducted upon or contemplated for the Mortgaged Property.

H. Inventory of Personal Property. Upon the request of Beneficiary, Trustor shall deliver to Beneficiary an inventory describing and showing the make, model, serial number and location of any and all fixtures and personal property owned by Trustor and from time to time used exclusively in the management, maintenance and operation of the Mortgaged Property (other than inventory or property, if any, expressly excluded from the operation of this Deed of Trust by separate written agreement), with a certification by Trustor that said inventory is a true and complete schedule of such fixtures and personal property owned by Trustor and used in the management, maintenance and operation of the Mortgaged Property and that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance and operation of the Mortgaged Property, and, except as previously disclosed and agreed to in writing, that such items are owned by Trustor free and clear of security interests, liens, conditional sales contracts or title retention arrangements. Trustor

hereby grants to Beneficiary a security interest in all such items of fixtures and personal property owned by Trustor under the terms and conditions of this Deed of Trust.

I. Financial Statement. For purposes of this Deed of Trust, the date that is one hundred twenty (120) days after the first day of each and every January is the “**Financial Statement Due Date**”. The requirement for the delivery of certified financial statements by Trustor to Beneficiary has been conditionally waived by Beneficiary, so long as no Termination of Financial Statement Waiver Event (as defined below) occurs. For purposes of this Deed of Trust, the phrase “**Termination of Financial Statement Waiver Event**” means the occurrence of one or more of the following: (1) an Event of Default has occurred; or (2) on or before the Financial Statement Due Date that occurs after Completion of Improvements Trustor has not furnished Beneficiary annual operating information relating to the Mortgaged Property for each calendar year on the form attached hereto as Exhibit “C”, which is incorporated herein by reference for all purposes (or such other form as reasonably required by Beneficiary from time to time), signed by Manager, and which includes (a) the certification that, to the best of Trustor’s knowledge, during the period of time covered by the particular statement, (i) no activity has been conducted upon the property in violation of any state, federal or local law, ordinance or regulation pertaining to toxic or hazardous materials, industrial hygiene or environmental conditions, and (ii) the Mortgaged Property complies in all material respects with the Americans With Disabilities Act of 1990, as amended, and any state-level equivalent law (collectively the “**ADA**”); and (b) a detailed listing of all tenants leasing space in the Mortgaged Property (such as for any gift shops, restaurants or kiosks but expressly excluding Hotel guests and tenants under Banquet Facility Leases) which listing evidences the rate, the term, the amount of space, annual rent, any other reimbursements paid by each tenant, and, where appropriate, sales information provided by such tenant on the form attached hereto as Exhibit “D” attached hereto and incorporated herein for all purposes (or such other form as required by Beneficiary from time to time) signed by a Manager of Trustor. If a Termination of Financial Statement Waiver Event occurs, thereafter Trustor shall furnish to Beneficiary on or before Financial Statement Due Date until the Indebtedness secured hereby has been fully paid, annual certified financial statements prepared by or for Trustor pertaining to Trustor’s operation of the Mortgaged Property, each such statement prepared in accordance with sound accounting principles, consistently applied, and each such statement prepared and signed by a Manager of Trustor. The financial statements referenced herein shall also contain Trustor’s certification that, during the period of time covered by the particular statement, to Trustor’s knowledge, (y) no activity has been conducted upon the Mortgaged Property in violation of any state, federal or local law, ordinance or regulation pertaining to Hazardous Materials, industrial hygiene or environmental conditions and (z) the Mortgaged Property complies in all material respects with the ADA.

If Trustor does not deliver the financial statements as and when required by this paragraph and such failure continues for a period of thirty (30) days after the notice from Beneficiary, there shall be added to the Indebtedness and Trustor agrees to pay upon demand Two Hundred Dollars (\$200.00) for each calendar month or part thereof following the expiration of such thirty (30) day period until the required financial statements are delivered to Beneficiary.

J. Restrictions upon Sale, Transfer or Mortgaging the Mortgaged Property or the Interest in Trustor. Trustor acknowledges that Beneficiary is relying on the credit worthiness and skill of Trustor in advancing sums secured hereby. Except for a natural person's transfer by will or applicable state intestacy laws (collectively, together with any other matters specifically defined below, "**Permitted Transfers**"): (a) if Trustor should sell, trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Deed of Trust, the granting of a security interest in) all or any part of the Mortgaged Property, or any interest of Trustor therein, absolutely or as security for a debt or other obligation, whether done in a direct or indirect method or enter into any contractual arrangements to do so; (b) if a shareholder, partner, member, trustee or beneficiary of Trustor (sometimes, a "**Tier Two Owner**" or a "**Constituent Owner**") should sell, trade, convey, transfer, mortgage, assign, exchange, pledge or encumber (including, without limiting these provisions or any similar references in this Deed of Trust, the granting of a security interest in) all or any part of its interest in Trustor or if such shareholder, partner, member, trustee or beneficiary in or of Trustor shall otherwise be diluted; or (c) if Trustor shall in any way, voluntarily or involuntarily, be divested of title or of any interest in the Mortgaged Property, then Beneficiary, at its option, may elect to accelerate the maturity of the Note and declare the entire amount of the Indebtedness immediately due and payable, whereupon Trustor shall have thirty (30) days to pay the full sum of the Indebtedness including, without limitation, principal and accrued interest due and payable, whether or not any such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge or encumbrance might diminish the value of the security for the Indebtedness or increase the likelihood of an Event of Default or increase the likelihood of Beneficiary having to resort to any other security for the Indebtedness after default or add or remove liability of any party for payment or performance of the Indebtedness. Trustor further agrees that the foregoing restriction shall be effective and remain in full force and effect throughout the term of this Deed of Trust and shall be applicable to Trustor, each shareholder, partner, member, trustee and beneficiary and each Constituent Owner and their respective heirs, executors, administrators, successors and assigns. The consent by Beneficiary to any one such sale, trade, conveyance, transfer, mortgage, assignment, exchange, pledge, or encumbrance (one or more of the preceding a "**Transaction**") shall not waive or forfeit the right of Beneficiary to elect to accelerate the Indebtedness to maturity as to any other Transaction. Trustor further covenants and agrees to give written notice to Beneficiary in the event there occurs any Transaction which would violate the terms and conditions of this provision. The term Transaction shall also include any voluntary or involuntary act or omission of Trustor. Nothing herein contained shall prevent Beneficiary from accelerating the Note at any time in the event Trustor enters into such a transaction and does not notify Beneficiary of same. Trustor may request Beneficiary to waive the right to declare the entire amount of the Indebtedness immediately due and payable and Beneficiary may, in its absolute discretion, consent or refuse to consent to the Transaction. Trustor may request Beneficiary to waive the right to declare the entire amount of the Indebtedness immediately due and payable and Beneficiary may, in its reasonable discretion, consent or refuse to consent to the Transaction (other than a Permitted Transfer). As a condition of consenting to the Transaction (other than a Permitted Transfer), Beneficiary may, in its absolute discretion, make one or more of the following requirements:

- (a) that the rate of interest contained in the Note be increased to a rate acceptable to Beneficiary;
- (b) that a transfer fee, in an amount determined by Beneficiary, be paid;
- (c) that a principal payment be made against the Note;
- (d) that the proposed transferee execute an assumption agreement or other document as Beneficiary may reasonably require; or
- (e) that any other requirement reasonably deemed appropriate by Beneficiary be satisfied.

No Transaction pursuant to the provisions of this Section VI(J) defined as a Permitted Transfer, shall in any way release Trustor or any other party liable on any of the Indebtedness or liable under any document securing, evidencing or relating to the Indebtedness from any such liability unless expressly provided in this Deed of Trust.

In addition to the matters defined as “**Permitted Transfers**” above in this Section VI(J), “**Permitted Transfers**” shall also mean one or more transfers that, in the aggregate, do not exceed forty-nine percent (49%) of the ownership interests in Trustor or any Constituent Owner of Trustor, provided that in all cases all of the following are true:

Trustor shall within not later than thirty days from Beneficiary’s written request from time to time provide Beneficiary in writing with all information reasonably requested by Beneficiary to confirm such ownership of Trustor and its Constituent Owners.

K. Delivery of Substitute Note. Trustor will, if the Note is mutilated, destroyed, lost or stolen, deliver to Beneficiary, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued but unpaid interest. Trustor shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note, and also such security or indemnity as may be reasonably requested by Trustor; provided, however, that if the original Beneficiary named herein is the then mortgagee under this Deed of Trust, an unqualified indemnity from the original mortgagee named herein shall be deemed to be satisfactory security or indemnification.

L. Compliance with Covenants, Conditions, Restrictions and Recorded Documents. Trustor shall, and shall cause the Mortgaged Property, to fully and timely comply with any and all covenants, conditions, restrictions and recorded documents benefiting, burdening or imposed on the Mortgaged Property or any portion thereof or the owner of all or such portion of the Mortgaged Property.

M. ERISA. As of the date hereof and throughout the term of this Deed of Trust (1) Trustor is not and will not be an “employee benefit plan” as defined in Section 3(3) of the

Employee Retirement Income Security Act, as amended (“**ERISA**”), which is subject to Title I of ERISA; (2) 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; (3) Trustor is not and will not be a “governmental plan” within the meaning of Section 3(3) of ERISA; (4) transactions by or with Trustor are not and will not be subject to state statutes applicable to Trustor regulating investments of fiduciaries with respect to governmental plans; and (5) Trustor shall not engage in any transaction which would cause any obligation or action taken or to be taken hereunder (or the exercise by Beneficiary of any of its rights under this Deed of Trust, the Note or the other Loan Documents to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Trustor further agrees to deliver to Beneficiary such certifications or other evidence of compliance with the provisions of this section as Beneficiary may from time to time request.

N. Segregated Parcel. Each subdivided lot comprising the Mortgaged Property is taxed separately without regard to any other real estate, and each parcel of the real property described on Exhibit “A” constitutes a legally subdivided lot under all applicable statutes, regulations, ordinances or publications and for all purposes such subdivided lots may be mortgaged, conveyed and otherwise dealt with as independent parcels.

O. Compliance with Building, Use and Development Laws. Without limiting the generality of any provision of this Deed of Trust, to the best of Trustor’s knowledge, the Mortgaged Property and its intended use by Trustor does now, and shall at all times hereafter, comply with any and all applicable zoning ordinances, subdivision and building codes, flood district laws, health and environmental laws and regulations and any and all other similar matters by any federal, state or local agency.

P. Single Purpose Entity.

(1) Generally. Until the Indebtedness is paid in full, Trustor must remain an SPE (as defined herein).

(2) For purposes of this Deed of Trust, “SPE” shall mean, a Utah corporation, limited partnership or limited liability company which, at all times after the date of this Deed of Trust:

(a) shall not engage in any business or activity, other than the ownership, operation and maintenance of the Mortgaged Property and activities incidental thereto;

(b) shall not acquire or own any assets other than fee or leasehold interests, as applicable, in any of the Mortgaged Property and other assets as may be necessary or appropriate for the operation of the Mortgaged Property and shall conduct and operate its business as presently conducted and operated;

(c) shall preserve its existence and remain in good standing under the laws of jurisdiction in which it is organized;

(d) shall not merge or consolidate with any other natural person or entity (either being a "**Person**");

(e) except as a result of Permitted Transfers, shall not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; or except for Permitted Transfers, transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable; or issue additional partnership, membership or other equity interests, as applicable; or seek to accomplish any of the foregoing;

(f) shall not: (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute; (ii) seek or consent to the appointment of a receiver, liquidator or any similar official; or (iii) make an assignment for the benefit of creditors or take any action in furtherance of the foregoing;

(g) shall not amend or restate its organizational or governing documents if such change would modify the requirements set forth in this Section VI(P);

(h) shall do all things necessary to observe organizational formalities and will not take any actions in violation of or inconsistent with the terms and provisions of the Partnership Agreement or other applicable organizational documents;

(i) shall not own any subsidiary or make any investment in, any other Person;

(j) shall not commingle its assets with the assets of any other Person and shall hold all of its assets in its own name (which may be an assumed name with the prior approval of Beneficiary, not to be unreasonably withheld, conditioned or delayed);

(k) shall not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than the Indebtedness and customary unsecured trade payables and accounts payable incurred in the ordinary course of owning and operating the Mortgaged Property, and obligations under any leases with respect to any portion of the Mortgaged Property;

(l) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person (this shall not preclude Trustor hiring an unrelated property management company whose duties include the foregoing under a commercially reasonable written management agreement);

(m) shall only enter into any contract or agreement with any general partner, member, shareholder, principal or affiliate of Trustor or any guarantor, or any general partner, member, principal or affiliate thereof, upon terms and conditions that are intrinsically fair, are in writing and substantially similar to those that would be available on an arm's-length basis with third parties;

(n) shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(o) except as provided herein, shall not assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of another Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(p) shall not make any loans or advances to any other Person and shall not acquire obligations or securities of its affiliates;

(q) shall file its own tax returns separate from those of any other Person, except to the extent that Trustor is treated as a "disregarded entity" or investment trust for tax purposes and is not required to file tax returns under applicable law, and pay any taxes required to be paid under applicable law;

(r) shall hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name or in any assumed name adopted by Trustor, shall correct any known misunderstanding regarding its separate identity and shall not identify itself or any of its affiliates as a division or part of the other;

(s) shall allocate fairly and reasonably shared expenses (including, without limitation, shared office space) and use separate stationery, invoices and checks;

(t) shall pay its own liabilities (including, without limitation, salaries of its own employees, if any) from its own funds; and

(u) shall not acquire obligations or securities of its partners, members or shareholders, as applicable

Q. Obligation to Comply With Embassy Suites Franchise Agreement. As a material inducement to Beneficiary to enter into the Loan transaction, Trustor agrees to maintain that certain Franchise Agreement between Trustor as franchisee and Hilton Franchise Holding LLC, a Delaware limited liability company as franchisor with an effective dated effective of or about June 1, 2016 with respect to the Mortgaged Property (the "**Franchise Agreement**"). Trustor agrees to (i) to fulfill or perform each and every covenant of the Franchise Agreement so as to keep it at all times in full force and effect, and (ii) not to enter into any new franchise agreement

nor make any modification, consent to any modification of, or cancel, terminate or consent to the surrender of the Franchise Agreement without the prior written consent of Beneficiary which consent shall not be unreasonably withheld. The failure to fulfill or perform, or cause the fulfillment or performance of, any such obligation or the making of or consent to any such modification, cancellation, termination or surrender, or the failure or refusal to prevent any such making of or consent to any such modification, cancellation, termination or surrender, shall be an Event of Default. Nothing contained in this Deed of Trust or in any other Loan Document shall preclude Beneficiary from taking any action to cure or remedy any default of Trustor hereunder under the Franchise Agreement, or any act, omission or occurrence which but for the passage of time, the giving of notice, or both, would be a default under the Franchise Agreement, and any amounts expended by Beneficiary in connection with such cure or remediation including, without limitation, reasonable attorney's fees and expenses, shall be an advance under and secured by this Deed of Trust and shall be included in the Indebtedness and shall be paid by Trustor to Beneficiary on demand. The preceding sentence shall not be construed to obligate Beneficiary to cure any such actual or potential defaults in Trustor hereunder or under the Franchise Agreement. Trustor agrees to provide Beneficiary with, or cause to be provided to Beneficiary, written notice of all written notices of default and all written notices of termination under the Franchise Agreement within five (5) business days after receipt.

R. Performance of Loan Agreement. The funds advanced and secured pursuant to this Deed of Trust shall be requisitioned and used solely for loan fees, development and construction costs and interest on the Note and for such other purposes described in and strictly in accordance with the Loan Agreement. The terms, provisions and conditions of the Loan Agreement are hereby incorporated herein and made a part hereof by this specific reference and are to remain in full force and effect as terms, provisions and conditions hereof. Upon the occurrence of an Event of Default, Beneficiary may at its option cause the entire Indebtedness secured by this Deed of Trust to become immediately due and payable, and in the event of such Event of Default of Trustor hereunder or under the Loan Agreement and whether or not Beneficiary shall cause the Indebtedness to become immediately due and payable, Beneficiary is hereby invested with full and complete authority to enter upon the Mortgaged Premises, to employ watchmen to protect the Mortgaged Premises from depredation or injury and to preserve and protect the personal property and equipment therein. All sums advanced by Beneficiary (exclusive of the advances of the principal of the indebtedness secured hereby) in accordance with the Loan Agreement shall be secured hereby as a further charge and lien upon the Mortgaged Property and secured hereby, and shall be due and payable within ten (10) business days of receipt of written demand.

VII. TERMINATION OF TRUST

If Trustor shall well and truly pay, or cause to be paid, all of the Indebtedness and does keep and perform each and every covenant, duty, condition, and stipulation herein imposed on Trustor, in the Note contained, or in any other document securing, evidencing or relating to the Indebtedness, then this Agreement and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to Trustor and the entire estate,

right, title and interest of the Trustee and Beneficiary will thereupon cease; and Beneficiary in such case shall, upon the request of Trustor and at Trustor's cost and expense, deliver to Trustor proper documents acknowledging satisfaction of this Agreement; otherwise, this Agreement shall remain in full force and effect.

VIII EVENTS OF DEFAULT

A. Trustor will be in default under this Deed of Trust upon the happening of any of the following events or conditions, or the happening of any other Event of Default as defined elsewhere in this Deed of Trust (herein individually and collectively referred to as an "Event of Default"):

(1) Trustor fails to make when due any payment of principal or interest or any installment of principal and interest under the Indebtedness, or Trustor fails to make when due any other payment due to Beneficiary under the Note, this Deed of Trust or any other Loan Document.

(2) Trustor fails to keep or perform any of the covenants, conditions, stipulations or other provisions contained in this Deed of Trust, the Note or in any other Loan Documents other than any event or condition specified in Sections VIII(A)(1), (3), (4), (5), (6), (7), (8), (9), (10) or (11), and such default remains uncured on the thirtieth (30th) day (or such longer number of days, up to a maximum of sixty (60) days in the aggregate, as are necessary to cure such default, provided that Trustor promptly commences and continuously and diligently pursues such cure) after written notice of such default to Trustor.

(3) Any warranty, representation or statement made in this Deed of Trust by Trustor is misleading or untrue in any material respect as of the date such warranty or representation is made.

(4) Trustor or Guarantor (during any period the Guaranty is outstanding) admits in writing its inability to pay its debts generally as they become due, (ii) files a petition in bankruptcy as a Debtor or seeking reorganization or an arrangement or otherwise to take advantage of any State or Federal bankruptcy or insolvency law, (iii) makes an assignment for the benefit of creditors, (iv) files a petition for or consents to the appointment of a receiver for its assets or any part thereof, or (v) without its consent has a petition filed in any bankruptcy or insolvency proceeding or an order, decree or judgment entered by a court of competent jurisdiction appointing a receiver of the Mortgaged Property or approving a petition filed against it seeking reorganization or an arrangement of it or its assets or debts under any bankruptcy or insolvency law and such petition, order, decree or judgment is not dismissed, vacated, set aside or stayed within sixty (60) days from the date of entry.

(5) Except for Permitted Transfers (including Permitted Exceptions), Trustor sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting these provisions or any similar references in this Deed of Trust, the granting of a

security interest in) the Mortgaged Property, the Collateral or any portion thereof or interest therein, or, except for Permitted Transfers (including Permitted Exceptions), Trustor or any Constituent Owner sells, trades, conveys, transfers, mortgages, assigns, exchanges, pledges or encumbers (including, without limiting any of the provisions of this subparagraph, the granting of a security interest in) any part of its interest in Trustor or any Constituent Owner, except for Permitted Transfers, or any such event occurs involuntarily to Trustor or such Constituent Owner, all without the prior written consent of Beneficiary.

(6) The authority and right of Trustor to do business in the State of Utah is terminated, withdrawn, cancelled or modified, and such authority is not reinstated within thirty (30) days after delivery of written notice thereof by Beneficiary to Trustor.

(7) Trustor's existence as a legal entity for any reason, by operation of law or otherwise, is modified in any way adverse to Beneficiary or terminates and is not reinstated within thirty (30) days after notice from Beneficiary.

(8) An "Event of Default" as defined under the Completion Guaranty occurs, except to the extent such Completion Guaranty has been released or terminated.

(9) An "Event of Default" as defined under the Payment Guaranty occurs, except to the extent such Payment Guaranty has been released or terminated.

(10) An "Event of Default" as defined under the Loan Agreement occurs.

IX. RIGHTS OF BENEFICIARY UPON DEFAULT

A. Acceleration of Indebtedness. Upon the occurrence of an Event of Default or at any time thereafter, Beneficiary may at its option and without demand or notice to Trustor, accelerate the maturity of the Note and declare the Indebtedness secured hereby immediately due and payable. Unless otherwise provided herein, Trustor hereby waives presentment for payment, protest and demand, notice of protest, demand, dishonor and default, notice of intent to declare the Indebtedness immediately due and payable and notice of the declaration that the Indebtedness is immediately due and payable.

B. Operation of Property by Beneficiary. Upon the occurrence of an Event of Default, and during the continuance at any time thereafter, in addition to all other rights herein conferred on Beneficiary, Beneficiary (or any person, firm or corporation designated by Beneficiary) may, but will not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude Trustor therefrom, and hold, use, administer, manage and operate the same to the extent that Trustor could do so. If the Mortgaged Property includes any type of business enterprise, Beneficiary may operate and manage such business without any liability of Beneficiary to Trustor resulting therefrom (excepting failure to use ordinary care in the operation and management of the Mortgaged Property); and Beneficiary or Beneficiary's designee may collect, receive and receipt for all proceeds accruing from such operation and management, and,

at Trustor's expense, make repairs and purchase needed additional property, and exercise every power, right and privilege of Trustor with respect to the Mortgaged Property. When and if the expenses of such operation and management have been paid and the Indebtedness has been paid, the Mortgaged Property shall be returned to Trustor (providing there has been no foreclosure sale). The provisions of this Section IX(B) establish a right under this Agreement and shall not affect the right of Beneficiary to the appointment of a receiver given Beneficiary by law. Beneficiary may, at any time after such Event of Default, apply to any court of competent jurisdiction for the appointment of a receiver and Trustor agrees that, subject to applicable law, such appointment shall be made upon a prima facie showing of a claimed default without reference to any offsets or defenses against such default and without regard to whether any portion of the Mortgaged Property is in danger of being lost, removed, injured or destroyed or of waste, whether income from the Mortgaged Property is in danger of being lost or whether the Mortgaged Property is or may become insufficient to discharge the obligations secured by this Agreement.

C. Judicial Proceedings. Upon the occurrence of an Event of Default, and during the continuance at any time thereafter, Beneficiary, in lieu of or in addition to causing the Trustee to exercise the power of sale hereafter given, may proceed by suit for a foreclosure of its lien on the Mortgaged Property, or to sue Trustor for damages on, arising out of said default, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right.

D. Foreclosure Sale.

(1) Trustee's Sale.

(a) Upon the occurrence of an Event of Default, Beneficiary may declare all sums secured hereby immediately due by delivery to Trustee of a written notice of default and election to sell (which notice Trustee shall cause to be recorded and mailed as required by law).

(b) As provided under Utah law, Trustee shall sell the property subject hereto at such time and at such place in the State of Utah as Trustee, in its sole discretion, shall deem best to accomplish the objects of these trusts, having first given notice of such sale as then required by law. The place of sale may be in the county in which the property to be sold, or any part thereof, is situated.

(c) At the time of sale so fixed, Trustee shall sell the property so advertised or any part thereof or interest therein either as a whole or in separate parcels to the highest bidder for cash in lawful money of the United States, payable at time of sale, and shall deliver to such purchaser a deed or deeds or other appropriate instruments conveying the property so sold, but without covenant or warranty, express or implied. Beneficiary and Trustee may bid and purchase at such sale. To the extent of the indebtedness secured hereby, Beneficiary need not bid for cash at any sale of all or any portion of the Mortgaged Property

pursuant hereto, but the amount of any successful bid by Beneficiary shall be applied in reduction of said indebtedness. Trustor hereby agrees, if it is then still in possession, to surrender, immediately and without demand, possession of said property to any purchaser. If Trustee or its successor or substitute shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the Mortgaged Property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

(d) Beneficiary, from time to time before Trustee's sale, may rescind any notice of breach and election to sell by executing, delivering and causing Trustee to record a written notice of such rescission. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other notices of breach and election to sell, nor otherwise affect any term, covenant or condition hereof or under any obligation secured hereby, or any of the rights, obligations or remedies of the parties thereunder.

(2) Collateral.

(a) On the happening of any Event of Default and during the continuance at any time thereafter, Beneficiary shall have and may exercise with respect to the Collateral all rights, remedies and powers of a Secured Party under the UCC with reference to the Collateral or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the UCC after any Event of Default by Trustor without regard to the preservation of the Collateral or its value and without the necessity of a court order, and apply the proceeds thereof first toward the payment of all costs and expenses and reasonable attorneys' fees incurred by Beneficiary or Trustee, and the balance toward the payment of the Indebtedness whether or not then due, and in such order or manner as Beneficiary may elect. Upon the occurrence of an Event of Default, Beneficiary shall have, among all other rights and remedies, the right to take possession or control of all or any part or portion of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing or taking control of the same, without being guilty of trespass and without liability for damages occasioned thereby, and to take any action deemed appropriate or desirable by Beneficiary, at its option and sole and absolute discretion, to repair, restore or otherwise prepare the Collateral for sale or lease or other use or disposition as authorized herein. To the extent permitted by law, Trustor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of Trustor or the formalities subscribed by law relative to the sale or disposition of the Collateral or to the exercise of any other right or remedy of Beneficiary existing after any Event of Default. To the extent that such notice is required and cannot be waived, Trustor agrees that if such notice is mailed postage prepaid to Trustor at the address shown herein at least ten (10) business days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice. All

notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile and confirmed by facsimile answer back, in each case addressed as follows (or to such other address or person as a party shall designate from time to time by notice to the other party): If to Beneficiary, at the address set forth in the Preamble of this Agreement; if to Trustor, at the address set forth in the Preamble of this Agreement. A notice shall be deemed to have been given: (w) in the case of hand delivery, at the time of delivery; (x) in the case of registered or certified mail, when delivered or the first attempted delivery on a business day; (y) in the case of overnight delivery, upon the first attempted delivery on a business day; or (z) in the case of facsimile, upon the confirmation of such facsimile transmission. Notwithstanding anything to the contrary contained in this Agreement, any notice given in accordance with any applicable law shall be deemed effective upon compliance with the requirements of such law.

(b) Trustor agrees that Trustee or Beneficiary may proceed to sell or dispose of both the real and personal property covered herein in accordance with the rights and remedies granted under this Agreement with respect to the Mortgaged Premises secured hereby. Trustor hereby grants Beneficiary the right, at its option, after any Event of Default by Trustor to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Indebtedness, whether or not then due, and in such order and manner as Beneficiary may elect. Trustor covenants and agrees that all recitals and any document transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Beneficiary or Trustee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred. All rights to a marshalling of the assets of Trustor, including such rights with respect to the Collateral and the Mortgaged Premises, are hereby waived.

(3) Application of Proceeds. The proceeds of any and all foreclosure sales of the Mortgaged Property, whether under the assent to or decree or power of sale herein granted, shall be applied in accordance with all applicable laws of the State of Utah.

(4) Prerequisites of Sales. In case of any foreclosure sale of the Mortgaged Property, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder, all statements of facts, or other recitals therein made as to the nonpayment of money secured or as to the request of the Trustee to enforce this trust, or as to the proper and due appointment of any substitute trustee, or as to the advertisement of sale, or time, place and manner of sale, or as to any other preliminary fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

X. USE OF INSURANCE PROCEEDS

A. Holding of Proceeds. Notwithstanding the provisions of Section VI(C) hereof, any insurance proceeds paid to Beneficiary will be first applied in payment of the expenses, if any, incurred by Beneficiary in the collection of said insurance proceeds and second the balance, if any, will be held and disbursed by Beneficiary in accordance with the following provisions:

(1) (a) Should there exist an Event of Default at the time of the casualty or should there occur at any time thereafter an Event of Default; (b) should the Franchise Agreement be terminated as a result of said damage, or, whether or not a result of such damages, at any time prior to the commencement of reconstruction; (c) should any insurance proceeds be remaining after the completion of all restoration work; (d) should the estimated time to fully complete the reconstruction work, as reasonably determined by Beneficiary, extend beyond the Scheduled Maturity Date; (e) should Trustor fail to comply with the requirements for disbursing the insurance proceeds and fail to cure the same within ten (10) days after delivery of written notice to Trustor; or (f) should Trustor fail to comply with the requirements for disbursing the insurance proceeds, then in any of the said events, then Beneficiary may, at its option, apply the insurance proceeds on the Indebtedness, in any order and whether due or not, or to the restoration of the Mortgaged Property, or to be released to Trustor, but any such application or release shall not cure or waive any default. In the event Beneficiary shall apply such amount to the Indebtedness, Trustor shall not be required to pay any additional prepayment premium as a result of such application.

(2) If the insurance proceeds have not been disbursed under the provisions of Section X(A) above, or if under Section X(A) Beneficiary elects to permit the insurance proceeds to be used for restoration of the Mortgaged Property, the proceeds will be held and disbursed as follows:

(a) Should the insurance proceeds be less than \$250,000.00, Trustor shall promptly commence and complete the work of restoring the damaged property and Beneficiary will disburse the portions of the insurance proceeds incrementally as work progresses, subject to the provisions of this paragraph, to Trustor to pay actual costs to replace, repair and restore the damaged property for (i) completion of the restoration work or applicable portions thereof to a condition as required by the Franchise Agreement and reasonably equivalent to the condition of the Mortgaged Property prior to such damage or condemnation, or otherwise reasonably satisfactory to Beneficiary, (ii) submission of a written report by Trustor that all restoration work has been completed, and (iii) receipt by Beneficiary of such evidence as Beneficiary may require that all mechanics and materialmen performing work or supplying materials for the restoration work have been fully paid or will be paid from the insurance (subject to Trustor's right to contest such charges as set forth herein). Such funds will be disbursed to Trustor as restoration repair work progresses within fifteen (15) days after Trustor's delivery of the foregoing items with respect to portions of the work, but Beneficiary shall not be required to make disbursements more than once every thirty (30) days.

(b) Should the insurance proceeds equal or be in excess of

\$250,000.00, but less than \$500,000.00, Trustor shall cause plans and specifications ("Plans") for the restoration of the damaged property to a condition reasonably equivalent to the condition of the Mortgaged Property prior to such damage, or otherwise reasonably satisfactory to Beneficiary, to be submitted to Beneficiary for approval, not to be unreasonably withheld, delayed or conditioned. Upon receipt of Beneficiary's approval, Trustor shall forthwith commence and complete the restoration of the damaged property in accordance with the approved Plans. Beneficiary will disburse the portions of the insurance proceeds incrementally as work progresses, subject to the provisions of this paragraph, to Trustor to pay the actual costs to repair and restore the damaged property for (i) completion of the restoration work or applicable portions thereof to a condition as required by the Franchise Agreement and reasonably equivalent to the condition of the Mortgaged Property prior to such damage or condemnation, or otherwise reasonably satisfactory to Beneficiary, (ii) submission of a written report by Trustor that the restoration work (or applicable portion thereof) has been completed, and (iii) receipt by Beneficiary of such evidence as Beneficiary may reasonably require that all mechanics and materialmen performing work (or the applicable portions thereof) or supplying materials for the restoration work (or the applicable portions thereof) have been completely paid for the work done or will be paid from the insurance (subject to Trustor's right to contest such charges as set forth herein). Such funds will be disbursed to Trustor as restoration repair work progresses within fifteen (15) days after Trustor's delivery of the foregoing items with respect to portions of the work, but Beneficiary shall not be required to make disbursements more than once every thirty (30) days.

(c) If the insurance proceeds are equal or in excess of \$500,000.00:

(i) Plans for the restoration of the damaged property to a condition reasonably equivalent to the condition of the Mortgaged Property prior to such damage, or otherwise reasonably satisfactory to Beneficiary, and a cost estimate will both be prepared by an architect or engineer employed by Trustor and reasonably acceptable to Beneficiary. The Plans and cost estimates will be submitted to Beneficiary for approval not to be unreasonably conditioned, withheld or delayed. Upon receipt of Beneficiary's approval, Trustor will promptly commence and diligently pursue the restoration work in accordance with the approved Plans. (ii) If prior to the commencement of, or at any time during the restoration work, Beneficiary shall reasonably determine and notify Trustor that the remaining unpaid cost of the restoration work shall exceed the undisbursed Construction Funds, Trustor shall promptly pay, in cash, to Beneficiary the amount of such excess costs. Until the amount of said excess costs is paid to Beneficiary, Beneficiary shall not be obligated to disburse any of the insurance proceeds held by it. The insurance proceeds and the amount of excess costs paid by Trustor are hereinafter called "Construction Funds". The amount of such excess costs paid by Trustor shall be disbursed prior to the disbursement of any of the insurance proceeds held by Beneficiary. (iii) The Construction Funds will be made available to Trustor as restoration repair work progresses pursuant to certificates of the architect or engineer approved by Beneficiary, not to be unreasonably withheld, conditioned or delayed, submitted not more than once every thirty (30) days. There shall be delivered to Beneficiary such other evidences as Beneficiary may reasonably request, from time to time, during the restoration work, as to the progress of the work, the compliance with the approved Plans, the total cost of restoration work to date of request, the total cost needed to complete the restoration

work, lien waivers or evidence of no liens against the Mortgaged Property (subject to Trustor's right to contest such charges as set forth herein). If at any time during the course of the restoration work, Beneficiary learns of facts concerning the restoration work which is materially adverse to Beneficiary, or payment or nonpayment of mechanics and materialmen, or inaccuracy of any information furnished with respect to it, Beneficiary may withhold the disbursement of funds until such time as it is prudent to continue to disburse the Construction Funds or, after an Event of Default or after written notice to Trustor notifying Make of such materially adverse facts and affording Trustor ninety (90) days to cure same to Beneficiary reasonable satisfaction, Beneficiary may determine not to make any further disbursements of the Construction Funds and instead to apply all such funds remaining to the payment of the Indebtedness then outstanding, whether due or not at such time, without any prepayment fee or premium, and in such order as determined by Beneficiary.

(3) Beneficiary shall not be required to hold any funds received by it described in this Article X in any account special or separate from Beneficiary's general account. No such funds shall be required to be placed in any interest bearing account, and any interest earned thereon shall constitute additional insurance proceeds to be applied as provided in this Deed of Trust.

XI. SPECIAL CONDITIONS

This Deed of Trust is expressly made subject to the following special conditions.

A. Successor Trustees. At the option of Beneficiary, without cause or notice, a successor or substitute trustee may be appointed by any officer, agent or attorney-in-fact of Beneficiary without procuring the resignation of the former Trustee and without any formality other than the recordation of a writing in the Office of the Recorder of Salt Lake County, Utah, designating a successor or substitute trustee, who shall thereupon become vested with and succeed to all the powers and duties given to the Trustee herein named, the same as if the successor or substitute trustee had been named as required under Utah law.

B. Waiver and Election. The exercise of any right or remedy by Beneficiary shall not be considered as a waiver of any right or remedy nor shall any acceptance by Beneficiary of Trustor's partial payment or partial performance of the obligations under the Note or hereunder, nor shall any failure or delay by Beneficiary in exercising any of its rights or remedies as to any Event of Default which may occur, operate as a waiver by Beneficiary of its rights or remedies with respect to the occurrence of any other or further Event of Default or to the recurrence of the same Event of Default. The filing of a suit to foreclose the mortgage lien granted by this Deed of Trust either on any matured portion of the Indebtedness or for the entirety of the Indebtedness, shall never be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the filing of the necessary notices for foreclosure, as provided in this Deed of Trust, preclude the exercise by Beneficiary of any other right or remedy including, without limitation, the prosecution of a later suit thereon.

C. Landlord-Tenant Relationship. Any foreclosure sale of the Mortgaged Property (in whole or in part) under this Deed of Trust or any conveyance in lieu thereof shall, without further notice, establish the relationship of landlord and tenant at sufferance between the purchaser and Trustor and any person or entity claiming an interest in the Mortgaged Property through Trustor or otherwise occupying any portion of the Mortgaged Property, and upon failure to surrender possession thereof, Trustor and all such persons and entities may be removed by a writ of possession upon suit by the purchaser.

D. Usury. Notwithstanding any provision in this Deed of Trust to the contrary, it is expressly provided that in no event should the aggregate amounts, which by applicable law are deemed to be interest with respect to this Deed of Trust, the Note or any of the other Loan Documents ever exceed the Maximum Nonusurious Rate (as defined in the Note). In this connection, it is expressly stipulated and agreed that it is the intention of Beneficiary and Trustor to contract in strict compliance with applicable usury laws of the State of Utah and/or of the United States (whichever permits the higher rate of interest) from time to time in effect. Nothing in this Deed of Trust, the Note or any of the other Loan Documents shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the Maximum Nonusurious Rate. If under any circumstances the aggregate amounts contracted for, charged or paid with respect to the Note, which by applicable law are deemed to be interest, would produce an interest rate greater than the Maximum Nonusurious Rate, Trustor and any other person obligated to pay the Note, stipulates that the amounts will be deemed to have been paid, charged or contracted for as a result of an error on the part of Trustor, any other such person obligated for the payment of the Note and Beneficiary, and upon discovery of the error or upon notice thereof from Trustor or the party making such payment, Beneficiary or the party receiving such excess payment shall, at its sole option, refund the amount of such excess payment or credit the excess payment against any other amount due under the Note

E. Enforceability. If any provision hereof is presently or at any time becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of Beneficiary to effectuate the provisions hereof.

F. Application of Payments. If the trust of lien or liens established by this Deed of Trust are invalid or unenforceable as to any part of the Indebtedness or if such lien or liens are invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially unsecured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness, and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness which is not secured or not fully secured by the lien or liens created herein.

G. Meaning of Particular Terms. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. The words

“**Trustor**” and “**Beneficiary**” shall include their successors and assigns. For convenience of drafting the following groups of words, and derivations thereof, are used interchangeably and any reference to one or more shall include the others notwithstanding anything seemingly to the contrary: (1) the words “**act**”, “**omission**” and “**occurrence**”; and (2) “**instrument**” and “**document**”.

H. Advances by Beneficiary. If Trustor shall fail to comply with the provisions with respect to the securing of insurance, payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair or any other term or covenant herein contained, Beneficiary may, but shall not be obligated to, incur such expenses as deemed necessary by Beneficiary, and make advances to perform such provisions, terms or covenants, and where necessary enter the Mortgaged Property for the purpose of performing same. Beneficiary is further empowered, but not obligated, to make advances for any expenditure deemed advisable by Beneficiary for the preservation of the Mortgaged Property or for the continuation of the operation thereof. Trustor agrees to repay any and all sums so advanced or expended, and all expenses incurred by Beneficiary in connection with the exercise of any of its rights under this Deed of Trust, upon demand, with interest from the date such advances or expenditures are made, determined on the same basis as matured principal in the Note and all sums so advanced or expended, with interest, shall be secured hereby.

I. Release or Extension by Beneficiary. Beneficiary, without notice, may release any part of the Mortgaged Property or any person liable for the Indebtedness without in any way affecting the trust or the liens hereof on any part of the Mortgaged Property not expressly released and may agree in writing with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Indebtedness or to waive the prompt and full performance of any term, condition or covenant of any document securing, evidencing or relating to the Indebtedness.

J. Partial Payments. Acceptance by Beneficiary of any payment of less than the amount due on the Indebtedness shall be deemed acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default herein; and at any time thereafter and until the entire amount due on the Indebtedness has been paid, Beneficiary shall be entitled to exercise all rights conferred on it by the terms of this Deed of Trust upon the occurrence of such an Event of Default.

K. Titles not to be Considered. All section, subsection, paragraph or other titles or headings contained in this Deed of Trust are for reference purposes only and this Deed of Trust shall be construed without reference to said titles.

L. Construction of Agreement. This Deed of Trust may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract or any one or more of them, in order to fully effectuate the trust and lien hereof and the purposes and agreements herein set forth.

M. Additional Taxes and Indemnification. Trustor agrees that if any state, federal or municipal government, or any of its subdivisions having jurisdiction, shall levy, assess or charge any tax, assessment or imposition upon this Deed of Trust or the credit or indebtedness secured hereby or the Note or the interest of Beneficiary in the Mortgaged Premises or upon Beneficiary by reason of any of the foregoing (excepting therefrom any income tax on interest payments on the principal portion of the Indebtedness secured hereby), then Trustor shall pay all such taxes to or for Beneficiary as they become due and payable, and provided further that in the event of passage of any law or regulation permitting, authorizing or requiring the tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits Trustor from paying the tax, assessment or imposition, to or for Beneficiary, then all sums hereby secured shall become immediately due and payable at the option of Beneficiary. Trustor agrees to exhibit to Beneficiary at any time upon request, official receipts showing payment of all taxes, assessments and charges which Trustor is required or elects to pay hereunder. Trustor agrees that if the government of the United States or any department or bureau thereof shall at any time require revenue stamps to be affixed to the Note or this Deed of Trust, Trustor will upon demand pay for stamps in the required amount and deliver them to Beneficiary and Trustor agrees, jointly and severally, to INDEMNIFY and HOLD HARMLESS Beneficiary from and against any and all losses, damages, liabilities or expenses (including, without limitation, reasonable attorney's fees and investigatory expenses) on account of such revenue stamps, whether such loss, damage, liability or expense arises before or after payment of the Note and any termination of the estate created by this Deed of Trust whether as a result of the exercise by Beneficiary of any default remedies available to it at law or in equity or otherwise; SUCH INDEMNIFICATION AND AGREEMENT TO HOLD HARMLESS SPECIFICALLY INCLUDES ANY LOSS, DAMAGE, EXPENSE OR LIABILITY CAUSED BY OR ATTRIBUTABLE TO THE ORDINARY OR SIMPLE NEGLIGENCE, AS OPPOSED TO THE GROSS NEGLIGENCE, OF AN INDEMNITEE, but such INDEMNIFICATION and AGREEMENT TO HOLD HARMLESS shall not apply to the extent that such loss, damage, expense or liability is caused by or attributable to Beneficiary's gross negligence or willful misconduct.

N. INDEMNIFICATION. TRUSTOR AGREES TO INDEMNIFY AND HOLD HARMLESS BENEFICIARY FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND INVESTIGATORY EXPENSES, INCURRED IN CONNECTION WITH ANY SUIT OR PROCEEDING IN OR TO WHICH BENEFICIARY MAY BE MADE A PARTY FOR THE PURPOSE OF PROTECTING THE LIEN OF THIS DEED OF TRUST, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY. Trustor's obligations pursuant to the foregoing indemnification and agreement to hold harmless shall survive any termination of the trust or estate established by this Deed of Trust, whether as a result of the exercise by Beneficiary of any default remedies available to it at law or in equity or otherwise.

O. Additional Documents. Trustor agrees that upon request of Beneficiary Trustor shall at any time and from time to time execute, acknowledge and deliver all such additional documents and further assurances of title and will do or cause to be done all such further acts and

things as may be necessary to fully effectuate the intent of this Deed of Trust. Trustor within ten (10) days upon request in person or by mail will furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Deed of Trust, the date to which interest has been paid and stating either that no offsets or defenses exist against the debt secured hereby, or, if such offsets or defenses are alleged to exist, the nature thereof.

P. Disclosure. Trustor agrees to disclose to Beneficiary upon request, the then ownership of the beneficial interest in any trust which then holds legal title to the Mortgaged Property and shall cause the owner(s) of such beneficial interest to furnish sufficient evidence to Beneficiary for it to determine the identity of all of the parties which compose such owner(s).

Q. Subrogation. In the event that Note is given for money advanced in the payment of a sum owing upon another note or indebtedness, Trustor hereby acknowledges that it has requested and does hereby request Beneficiary to advance the money necessary to pay such Note or Indebtedness, whether or not a release or transfer of said other note or indebtedness has been or will be executed by the owner and holder thereof, and Trustor hereby agrees that Beneficiary and Beneficiary's successors and assigns shall be, and are hereby, subrogated to any and all of the rights, liens, remedies, equities, superior title and benefits held, owned, possessed or enjoyed at any time by any owner or holder of said other note or indebtedness, to secure payment to Beneficiary of the Note hereby secured and, accordingly, any such other note and indebtedness, and all liens securing same are hereby extended to the maturity date of the Note hereby secured in order to additionally secure such Note. Nothing in this Section XI(Q) shall alter any obligation of Trustor hereunder or under the Note.

R. Time. Time is of the essence of this Deed of Trust.

S. Multiple Counterparts. This Deed of Trust may be executed in multiple counterparts, each of which shall be an original document and which, taken together, shall constitute one and the same agreement.

T. Notices. All notices required to be given hereunder shall be in writing and shall be deemed served and received on the date of deposit in United States mail and sent certified mail, return receipt requested, postage prepaid, and addressed to the applicable party at the addresses specified in the introductory paragraph of this Deed of Trust, or such other addresses as may from time to time be designated by written notice given as herein required. The parties hereto agree that a single notice sent to Trustor at its address set forth herein (or otherwise designated in accordance with this Section XI(T)) shall be deemed notice to all parties constituting Trustor. Personal delivery to a party or to any officer, trustee, partner, agent or employee of such party at its address herein shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Notwithstanding the foregoing, no notice of change of address shall be effective until thirty days after the date of receipt thereof.

U. Governing Law. This Deed of Trust is made by Trustor and accepted by the undersigned in the State of Utah, with reference to the laws of such state, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

XII. LIMITATION OF LIABILITY

Without limiting in any way the obligations of Guarantor under the Guaranty, after Completion of Construction, as such term is defined in the Loan Agreement, Beneficiary's sole recourse against Trustor, except as otherwise specifically provided below in the event of a default in the payment of the Note by Trustor or any Other Liable Party or any other default under any other Loan Document, shall be against the Mortgaged Property described in this Deed of Trust and such other documents securing, evidencing or relating to the Note, and Beneficiary shall not be entitled to recover any deficiency judgment against Trustor if the foreclosure or recovery of such Mortgaged Property is not sufficient to pay the amount owed by Trustor hereunder. Notwithstanding the foregoing limitation of liability, Trustor shall be fully liable (a) for fraud or misrepresentation made in or in connection with the Note or any document securing, evidencing or relating to the payment of the Note or the apparent purpose of which is to deprive Beneficiary of the security for the Note; (b) for failure to pay taxes, assessments, charges for labor or materials or any other charges which can create liens on any portion of the Mortgaged Property; (c) for the misapplication of (i) proceeds of insurance covering any portion of the Mortgaged Property, or (ii) proceeds of the sale or condemnation of any portion of the Mortgaged Property, or (iii) rentals and security deposits received by or on behalf of Trustor subsequent to the date on which Beneficiary gives written notice of foreclosure or the exercise of Beneficiary's assignment of rents; (d) for failure to maintain, repair or restore the Mortgaged Property in accordance with any document securing, evidencing or relating to the payment of the Note; (e) for any act or omission knowingly or intentionally committed or permitted by Trustor which results in the waste, damage or destruction to the Mortgaged Property, but only to the extent such events are not covered by insurance proceeds which are received by Beneficiary; (f) for the return to Beneficiary of all unearned advance rentals and security deposits paid by tenants of the Mortgaged Property or any guarantors of the leases of such tenants which are not rightfully refunded to or which are forfeited by such tenants or guarantors; (g) for the return of, or reimbursement for, all personal property taken from the Mortgaged Property by or on behalf of Trustor, except as permitted under this Deed of Trust; (h) for any liability of Trustor pursuant to the provision contained in this Deed of Trust pertaining to hazardous or toxic materials or substances; (i) for any liability of Trustor pursuant to the Certificate and Indemnity Regarding Hazardous Substances executed by Trustor and delivered to Beneficiary in connection with the indebtedness evidenced by the Note; (j) for any delay, after an Event of Default, in deeding and assigning over the Mortgaged Property to Beneficiary, or failure to cooperate in a consensual foreclosure within ninety (90) days of Beneficiary's request; (k) for failure to maintain or alter the Mortgaged Property in compliance with the ADA; and (l) for all court costs and reasonable attorneys' fees incurred in connection with the enforcement of one or more of the above subparagraphs (a) through (k), inclusive. Notwithstanding the foregoing limitation of liability, nothing in this Deed of Trust, the Note or in any other Loan Document that may limit

Beneficiary's recourse against Trustor shall alter, waive or otherwise limit any liability or obligation of Guarantor under the Guaranty.

XIII. CONSTRUCTION LOAN

The purpose of this Deed of Trust is to secure monies advanced or to be advanced for the purpose of paying for the development of and construction of improvements on the Mortgaged Premises in whole or in part. The proceeds of the Loan are to be advanced by Beneficiary to Trustor from time to time pursuant to the terms and conditions of the Loan Documents. The maximum amount of the future advances which Beneficiary is under a contractual duty to make to Trustor pursuant to the Loan Documents is the amount of the Note set forth above.

[THE REMAINDER OF THIS PAGE INTENTIONALLY RESERVED]

EXECUTED effective as of the date first set forth above.

TRUSTOR:

SOJO HOTEL PARTNERS, LLC,
a Utah limited liability company

By: TGC SoJo Partners, LLC,
a Utah limited liability company
Its: Manager

By: _____
John R. Thackeray, Manager

By: _____
Kevin S. Garn, Manager

STATE OF UTAH §
 §
COUNTY OF SALT LAKE §

Before me, the undersigned authority, a Notary Public, on this day personally appeared John R. Thackeray, as Manager of TGC SoJo Partners, LLC, a Utah limited liability company, the Manager of SOJO HOTEL PARTNERS, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this 15 day of August, 2016.



Gaylynn Hart
Notary Public, State of Utah

[Signature Page to Deed of Trust, Security Agreement and Financing Statement – SoJo Hotel Partners, LLC]

STATE OF UTAH §
 §
COUNTY OF SALT LAKE §

Before me, the undersigned authority, a Notary Public, on this day personally appeared Kevin S. Garn, as Manager of TGC SoJo Partners, LLC, a Utah limited liability company, the Manager of SOJO HOTEL PARTNERS, LLC, a Utah limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed, and as the act of said limited liability company.

Given under my hand and notarial seal this 15 day of August, 2016.

Gaylynn Hart
Notary Public, State of Utah



[Signature Page to Deed of Trust, Security Agreement and Financing Statement – SoJo Hotel Partners, LLC]

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EXHIBIT "A"

MORTGAGED PROPERTY DESCRIPTION

PARCEL 1:

Lot 2, SOJO SUBDIVISION, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder.

PARCEL 2:

A non-exclusive easement for access purposes, appurtenant to Parcel 1, as established by that certain Easement recorded February 10, 2011 as Entry No. 11132147 in Book 9904 at Page 6727.

ALSO: A non-exclusive easement for ingress and egress, appurtenant to Parcel 1, as established by that certain Cross Easement Agreement recorded February 10, 2011 as Entry No. 11132148 in Book 9904 at Page 6733.

ALSO: A non-exclusive easement for access as disclosed in the Declaration of Covenants, Conditions, Restrictions and Easement for South Jordan Station recorded as Entry No. 12300849 in Book 10442 at Page 2682.

ALSO: A perpetual easement and right of way as established by that certain Restrictive Easement recorded August 16, 2016 as Entry No. 12343735 in Book 10464 at Page 6519.

ALSO: A non-exclusive, perpetual easement and right of way as established by that certain Non-Exclusive Pipeline Easement Agreement recorded August 16, 2016 as Entry No. 12343736 in Book 10464 at Page 6525.

ALSO: A non-exclusive, perpetual easement and right of way as established by that certain Non-Exclusive Pipeline Easement Agreement recorded August 16, 2016 as Entry No. 12343737 in Book 10464 at Page 6532.

[Exhibit "A" to Deed of Trust, Security Agreement and Financing Statement – SoJo Hotel Partners, LLC]

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EXHIBIT "B"

PERMITTED EXCEPTIONS

Taxes or assessments which are now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessment on real property or by the Public Records.

2. Any facts, rights, interest, or claims which are not shown by the Public Records but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession, or claiming to be in possession, thereof.
3. Easements, liens, encumbrances, or claims of easements, liens or encumbrances which are not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and that are not shown in the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in Patents or in Acts authorizing the issuance thereof; (c) Indian treaty or aboriginal rights including, but not limited to, easements or equitable servitudes; (d) water rights, claims to water or water rights, whether or not the matters excepted in (a), (b), (c), or (d) are shown by the Public Records.
6. Any liens, or right to a lien, for services, labor or materials theretofore or hereafter furnished, imposed by law and not shown by the Public Records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.
8. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity or garbage collection or disposal or other utilities unless shown as an existing lien by the Public Records.
9. Taxes for the year 2016 are accruing as a lien not yet due and payable under previous Parcel No. 27-13-127-008. (covers this and other property) Taxes for the year 2015 were EXEMPT.

[Exhibit "B" to Deed of Trust, Security Agreement and Financing Statement – SoJo Hotel Partners, LLC]

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10. Taxes for the year 2016 are accruing as a lien not yet due and payable under previous Parcel No. 27-13-100-061. (covers this and other property) Taxes for the year 2015 were EXEMPT.

NOTE: Taxes for the year 2017 will be assessed under Parcel No. 27-13-127-010.

11. Property lies within the boundaries of South Jordan City, South Salt Lake Valley Mosquito Abatement District, Jordan Valley Water Conservancy District, South Valley Sewer District, Crescent Cemetery Maintenance District, Central Utah Water Conservancy District and the Gateway Central Redevelopment Area - South Jordan, and is subject to any and all charges and assessments levied thereunder.
12. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
13. Claim, right, title or interest to water or water rights whether or not shown by the public records.
14. Easements, notes and restrictions as shown on the recorded plat for SoJo Subdivision.
15. Intentionally deleted by Title Company.
16. Terms, conditions and restrictions provided in that certain Easement, dated January 14, 2011 and recorded February 10, 2011 as Entry No. 11132147 in Book 9904 at Page 6727.
17. Terms and conditions as contained in that certain Cross Easement Agreement by and between Jordan Gateway Properties, LLC, a Utah limited liability company and Utah Transit Authority, a public transit district, dated December 16, 2010 and recorded February 10, 2011 as Entry No. 11132148 in Book 9904 at Page 6733.
18. Ordinance No. 2008-15 Adopting the Gateway Central Redevelopment Project Area Plan, dated October 7, 2008 and recorded October 31, 2008 as Entry No. 10553414 in Book 9655 at Page 7776.
19. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records.
20. Protective Covenants, Conditions and Restrictions, but deleting any covenant condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants,

[Exhibit "B" to Deed of Trust, Security Agreement and Financing Statement – SoJo Hotel Partners, LLC]

conditions, or restrictions violate Title 42, USC 3604. Recorded June 15, 2016 as Entry No. 12300849 in Book 10442 at Page 2682.

21. Easement in favor of South Valley Sewer District, a body politic of the State of Utah for a perpetual right-of-way and easement to construct, maintain, operate, repair, inspect, protect, install, remove and replace sewer pipelines, valves, valve boxes and other sewer transmission and distribution structures and facilities, by instrument recorded July 7, 2016 as Entry No. 12315976 in Book 10449 at Page 9221.
22. Subject to the following matters disclosed on that certain survey prepared by Johanson Surveying, having been certified under the date of June 28, 2016, as Job No. S-16-082, by R. Shane Johanson, a Registered Land Surveyor holding License No. 7075114:
 - a. storm drainage facilities
 - b. water line easements
 - b. pedestrian access easement
23. Terms and conditions contained in that certain Restrictive Easement recorded August 16, 2016 as Entry No. 12343735 in Book 10464 at Page 6519.
24. Terms and conditions contained in that certain Non-Exclusive Pipeline Easement Agreement recorded August 16, 2016 as Entry No. 12343736 in Book 10464 at Page 6525.
25. Terms and conditions contained in that certain Non-Exclusive Pipeline Easement Agreement recorded August 16, 2016 as Entry No. 12343737 in Book 10464 at Page 6532.

[Exhibit "B" to Deed of Trust, Security Agreement and Financing Statement – SoJo Hotel Partners, LLC]

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EXHIBIT "C"

FORM OF ANNUAL OPERATING INFORMATION

CASH BASIS OPERATING STATEMENT FROM _____ TO _____

Loan # _____

Borrower: _____

Gross Potential Minimum Rent at year end based on 100% Occupancy: _____

Income:

Minimum rentals	\$ _____
Overage or percentage rentals	\$ _____
Expense reimbursements	\$ _____
Other (specify)	\$ _____

Total Income \$ _____

Operating Expenses:

Taxes (ad valorem)	\$ _____
Utilities	\$ _____
Maintenance & repair	\$ _____
Management	\$ _____
Insurance	\$ _____
Leasing fees	\$ _____
Other (specify)	\$ _____

Total Expense \$ _____

Net Operating Income Before Interest and Depreciation \$ _____

Debt Service (separate line for each loan) \$ _____

Capital expenditures \$ _____

Net Cash Flow \$ _____

Depreciation \$ _____

I certify, as _____ of Borrower, the operating information shown above is true and correct in all material respects.

I certify to the best of my knowledge, that during the period of time covered by this statement (1) no activity has been conducted upon the property in violation of any state, federal or local law, ordinance or regulation pertaining to toxic or hazardous materials, industrial hygiene or environmental conditions and (2) the property complies with the Americans with Disabilities Act.

_____ as _____ of Borrower

[Exhibit "C" to Deed of Trust, Security Agreement and Financing Statement – SoJo Hotel Partners, LLC]

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