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9/29/2021 3:28:00 PM \$40.00
Book - 11246 Pg - 8657-8696
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 40 P.

APN: 28-08-101-063, 28-08-101-070,
28-08-101-065, 28-08-101-064 and
28-08-101-067

PREPARED BY AND UPON
RECORDATION RETURN TO:

Umpqua Bank
1111 Third Avenue
Suite 2900
Seattle, Washington 98101
Attn: Linda Gudjonson

143136 NTF

FPA SANDY MALL ASSOCIATES, LLC, a Delaware limited liability company, and **FPA SANDY PADS, LLC**, a Delaware limited liability company as Trustor
(collectively, Trustor)

to

COTTONWOOD TITLE INSURANCE AGENCY, INC.,
a Utah corporation, as trustee
(Trustee)

For the benefit of **UMPQUA BANK**, an Oregon chartered bank, as beneficiary
(Beneficiary)

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

Dated: September 27, 2021

Location: Salt Lake County, Utah

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

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

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made and entered into as of September 21, 2021, by Trustor, FPA SANDY MALL ASSOCIATES, LLC, a Delaware limited liability company, being the fee title owner of the real property labeled "Parcel 1" and benefitted interest holder in "Parcel 1a" and "Parcel 1b" described on attached Exhibit A, and FPA SANDY PADS, LLC, a Delaware limited liability company, being the fee title owner of the real property labeled "Parcel 2" and benefitted interest holder in "Parcel 2a" and "Parcel 2b" described on attached Exhibit A (collectively and each jointly and severally, "Trustor") both of whose mailing address is 2082 Michelson Drive, Suite 400, Irvine, California 92612. The Trustee is COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation, whose mailing address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121. The Beneficiary is UMPQUA BANK, an Oregon state-chartered bank ("Beneficiary"), whose mailing address is c/o Oregon Commercial Real Estate, P.O. Box 1580, Roseburg, Oregon 97470-0367.

For purposes of Chapter 9a of the Utah Uniform Commercial Code, this Deed of Trust constitutes a Security Agreement with Trustor being the Debtor and Beneficiary being the Secured Party. This Deed of Trust also constitutes a Financing Statement filed as a fixture filing pursuant to Chapter 9a of the Utah Uniform Commercial Code as adopted in the state of the Property Jurisdiction (as defined in the Loan Agreement) with respect to any and all fixtures included within the term "Property" as used herein and with respect to any goods or other personal property that may now or hereafter become such fixtures. The mailing address of the Trustor and the address of the Beneficiary from which information may be obtained are set forth on the first page of this Deed of Trust.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby

irrevocably grants, bargains, sells, transfers, conveys and assigns to Trustee, as trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the following property, rights, interests and estates now owned, or hereafter acquired by Trustor (collectively, the "Property"):

(a) The real property described on Exhibit A, all rights to the alleys, streets and roads adjoining or abutting the real property, all easements, access, air and development rights, minerals and oil, gas and other hydrocarbon substances, water, water rights, including but not limited to Water Rights (as defined below), water stock, water permits, water shares, well rights related to the Land, and all other rights, hereditaments, privileges and appurtenances now or hereafter belonging or in any way appertaining to such real property (the "Land").

(b) All buildings, improvements and tenements now or hereafter located on the Land (the "Improvements"), including, without limitation, all fixtures, articles and accessions of property attached to, or used or adapted for use in the ownership, development, operation or maintenance of the Land and Improvements (whether such items are leased, owned or subject to any title-retaining or security instrument); all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus; all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces; all ranges, stoves, disposals, refrigerators and other appliances; all escalators and elevators, baths, sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash; all carpeting, underpadding, floor covering, paneling, and draperies; all furnishings of public spaces, halls and lobbies; and all shrubbery and plants. All such items shall be deemed part of the Land and not severable wholly or in part without material injury to the freehold.

(c) All of the present and future rents, revenues, issues, accounts, deposit accounts, general intangibles, investment property, instruments, money, cash equivalents, profits and income of the Land and Improvements, all rights to receive rental assistance payments and rent subsidies with respect to the occupancy or use of all or any part of the Land and Improvements, and all present and future leases and other agreements for the occupancy or use of all or any part of the Land and Improvements, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature, and all guarantees of tenants' or occupants' performance under such leases and agreements.

(d) All of Trustor's assets, including, without limitation, tangible and intangible personal property now or hereafter used or acquired in connection with or in any way arising out of or related to the ownership, development, operation or maintenance of the Land and Improvements, including, without limitation, all furniture, furnishings, equipment, supplies, inventory and other goods, wherever located, whether in the possession of Trustor, warehousemen, bailee or any other person; all site plans, plats, architectural plans, specifications, work drawings, surveys engineering reports, test borings, market surveys, and other similar work products; all permits, licenses, franchises and trade names; all contract rights (including, without limitation, all architectural, construction, engineering, consulting and management contracts, all

insurance policies, and all performance, payment, completion and other surety bonds); and all claims, causes of action, warranties, accounts receivable, escrow accounts, insurance policies, deposits (including tax, insurance and other reserves), instruments, documents, general intangibles and business records.

(e) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to the Land or the Improvements.

(f) All proceeds (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, all insurance proceeds and condemnation awards.

(g) All proceeds of the foregoing.

TO SECURE THE FOLLOWING ("Secured Obligations"):

(1) Payment of the sum of \$16,000,000, or so much has been advanced with interest thereon, according to the terms and provisions of a promissory note (together with all modifications, amendments, extensions and renewals, the "Note") of even date herewith, made by Trustor and payable to Beneficiary.

(2) Payment of all other sums which are or may become owing from Trustor as under the Loan Documents (as hereinafter defined).

(3) Performance of all other obligations of Trustor under the Loan Documents.

(4) Payment and performance of all obligations of Trustor under this Deed of Trust, together with all advances, payments or other expenditures made by Beneficiary or Trustee as or for the payment or performance of any such obligations of Trustor.

(5) Payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Deed of Trust recites are secured hereby.

(6) Payment and performance of all future advances and other obligations that the then record owner of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Deed of Trust.

(7) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (a) modifications, extensions or renewals at a different rate of interest, or (b) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

(8) All debt, liabilities, or obligations, now existing or hereafter arising, due or to become due, absolute or contingent, of Trustor to Beneficiary and/or its affiliates under any Financial Contract (as defined in the Loan Agreement) permitted hereunder. Notwithstanding

the foregoing, this Deed of Trust does not secure a consumer purpose transaction or any leasing product between Trustor and Beneficiary.

The term "obligations" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation.

The word "Indebtedness" means the indebtedness evidenced by the Note or Loan Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Trustor is responsible under this Deed of Trust or under any of the Loan Documents. Specifically, without limitation, Indebtedness includes indebtedness, liabilities, or obligations, now existing or hereafter arising, due or to become due, absolute or contingent, of the Trustor to the Beneficiary and/or its affiliates under any Financial Contract.

As used herein, the term "Loan Documents" means the Note, this Deed of Trust, the Loan Agreement ("Loan Agreement") between Beneficiary and Trustor of even date herewith, and all related documents and instruments (except the Unsecured Real Estate Environmental and Access Law Indemnity dated the same as this Deed of Trust and executed by Trustor and certain other parties in favor of Beneficiary (the "Indemnity Agreement") and any guaranty of the Secured Obligations (the "Guaranties")), and any and all modifications, extensions, renewals and replacements thereof. The Secured Obligations may be indexed, amended, modified, adjusted, renewed or renegotiated. Neither Trustor's obligations under the Indemnity Agreement nor Guarantor's obligations under the Guaranty are secured by this Deed of Trust. Except as provided in the preceding sentence, all terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property are hereby deemed to have notice of the terms of the Secured Obligations and that this Deed of Trust secures future advances, and to have notice, if provided therein, that: (a) the Note, the Loan Agreement or any other Secured Obligation may permit borrowing, repayment and reborrowing and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time. Absent default under the terms of the Secured Obligations, all advances thereunder by Beneficiary are obligatory and are secured by this Deed of Trust. All such obligatory advances shall have the same priority as the funds initially advanced under any such Secured Obligation.

TRUSTOR HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

1. TITLE AND USE

1.1 Warranty of Title

Trustor warrants, represents, covenants and agrees as follows: (a) Trustor holds marketable fee simple title to the Property with the full right and power to grant, convey and assign the Property; (b) the Property is free from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the Permitted Exceptions (as such term is defined in

the Loan Agreement); (c) no other lien or encumbrance, whether superior or inferior to this Deed of Trust, except Permitted Exceptions, shall be created or suffered to be created by Trustor without the prior written consent of Beneficiary; (d) no default on the part of Trustor or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification; (e) complete and current copies of the Permitted Exceptions have been furnished to Beneficiary, and none of them have been or will be modified by Trustor without Beneficiary's prior written consent; (f) Trustor shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Beneficiary a copy of all notices delivered in connection with the Permitted Exceptions; (g) Beneficiary has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Trustor shall, from time to time, at the request of Beneficiary, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Beneficiary may request; and (h) Trustor shall forever warrant and defend the Property unto Beneficiary against all claims and demands of any other person whatsoever, subject only to nondelinquent taxes and assessments and the Permitted Exceptions.

1.2 Non-Agricultural Use; Commercial Loan

Trustor represents and warrants to Beneficiary (a) that the Property is not used principally for agricultural purposes; and (b) the Loan secured by this Deed of Trust was not made primarily for personal, family or household purposes. Trustor acknowledges that the stated purpose for which this Security Instrument is given is not to construct residential rental property.

2. TRUSTOR'S COVENANTS

2.1 Payment and Performance of Secured Obligations

Trustor shall pay when due all sums which are now or which may become owing under the Note, and Trustor shall pay and perform all other Secured Obligations in accordance with their terms.

2.2 Payment of Taxes, Utilities, Liens and Charges

(a) Taxes and Assessments

Except as the same may otherwise be paid under Section 3, Trustor shall pay when due directly to the payee thereof all taxes and assessments (including, without limitation, nongovernmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Deed of Trust. Upon request, Trustor shall promptly furnish to Beneficiary all notices of amounts due under this subparagraph and all receipts evidencing such payments.

(b) Utilities

Trustor shall pay when due all utility charges and assessments for services furnished to the Property.

(c) Labor and Materials

Trustor shall pay when due the claims of all persons supplying labor or materials to or in connection with the Property.

(d) Liens and Charges

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

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

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

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

(5) Trustor will cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust is a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or

coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgage's Title Insurance Policy.

(6) Trustor will pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor will have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(7) If Trustor fails to remove and discharge any such lien, encumbrance or charge, or if Trustor disputes the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but will not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor will, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

(e) Taxes, Assessments and Other Charges Imposed on Beneficiary

If, at any time after the date of this Deed of Trust, any law is enacted or changed (including any interpretation thereof) which subjects Beneficiary to any increase in any tax (except federal and state income taxes), assessment or other charge, in any form measured by or based on any portion of the Indebtedness secured by this Deed of Trust, Trustor shall pay such increased amount to Beneficiary on demand; provided that if any such payment would be unlawful, Beneficiary may declare all accrued interest and the entire principal balance of the Note immediately due and payable.

2.3 Insurance

(a) Coverages Required

Trustor shall maintain, at no expense to Trustee or Beneficiary, insurance coverages as described in the Loan Agreement in effect with respect to the Property at all times.

(b) Policies

Each insurance policy shall be with a company and in a form acceptable to Beneficiary and comply with the terms of the Loan Agreement.

(c) Payment; Renewals

Trustor shall promptly furnish to Beneficiary all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Section 3, Trustor shall pay all premiums on insurance policies directly to the carrier. At least 30 days prior to the expiration date of each such policy, Trustor shall furnish to Beneficiary a renewal policy in a form acceptable to Beneficiary, together with evidence that the renewal premium has been paid.

(d) Application of Insurance Proceeds

In the event of any material loss, Trustor shall give prompt written notice thereof to the insurance carrier and Beneficiary. Trustor hereby authorizes Beneficiary as Trustor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Beneficiary shall have no obligation to do so. Beneficiary shall apply any insurance proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to:

(1) The payment of the Secured Obligations, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or

(2) The reimbursement of Trustor, under Beneficiary's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Beneficiary may, at its option, condition the reimbursement on Beneficiary's approval of the plans and specifications of the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Beneficiary may reasonably require.

Nothing herein contained shall be deemed to excuse Trustor from restoring, repairing or maintaining the Property as provided in Section 2.4, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount.

(e) Application of Insurance Proceeds to Restoration

Notwithstanding the provisions of Section 2.3(d), Trustor, rather than Beneficiary, shall have the right to direct the application of insurance proceeds to payment of the Secured Obligations or to repair or restoration of the Property upon satisfaction of the following conditions:

(1) There is then no Event of Default nor any event or condition which would be an Event of Default if not cured within the time allowed under the Loan Documents.

(2) If the proceeds are to be applied to repair or for restoration then in addition to the matters required under Section 2.3(d)(2) above, Beneficiary shall have approved each of the following with respect to the repair or restoration: (i) the construction contract, and if required by Beneficiary, payment and performance bonds with dual obligee rider; (ii) evidence that the insurance proceeds are adequate to restore the Property to its condition immediately prior to the casualty, and if insufficient, the deficiency shall be deposited with Beneficiary for disbursement prior to disbursement of insurance proceeds; (iii) evidence that Trustor has funds or insurance proceeds that are sufficient to pay operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration; (iv) evidence that upon such repair or restoration the Property will be in compliance with all applicable laws, ordinances and regulations; (v) evidence that such repair or restoration of the Property will be completed at least 30 days before the current maturity date under the Note; and (vi) evidence that upon the completion of any such repair or restoration the Property will produce sufficient income and be of sufficient value to be adequate security for the Secured Obligations.

(3) Each disbursement shall be made in accordance with Beneficiary's customary disbursement control procedures for the administration of construction loans.

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

(f) Transfer of Title

If the Property is sold pursuant to Section 4 or if Beneficiary otherwise acquires title to the Property, Beneficiary shall have all of the right, title and interest of Trustor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

2.4 Preservation and Maintenance of Property; Right of Entry

(a) Preservation and Maintenance

Trustor represents and warrants that the Improvements are free from damage caused by fire or other casualty. Trustor shall (i) not commit or suffer any waste or permit any impairment or deterioration of the Property, (ii) not abandon the Property, (iii) restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, in the event of any

damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) keep the Property, including the Improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and (v) generally operate and maintain the Property in a commercially reasonable manner.

(b) Alterations

No structural elements of the Improvements shall be altered, removed or demolished, in whole or in part, without Beneficiary's prior written consent, Beneficiary shall not unreasonably withhold or delay its consent to minor structural alterations, if Trustor furnishes plans and assurances that the work will be completed in good workmanlike quality and Beneficiary determines in its reasonable business judgment that the value of the Property will not be materially and adversely affected. Trustor shall not remove any fixture or chattel covered by this Deed of Trust and adapted to the use and enjoyment of the Property at any time without Beneficiary's prior written consent unless actually replaced by an article of equal suitability which is owned by Trustor free and clear of any lien or security interest.

(c) Right of Entry

Beneficiary is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice and subject to any required notice requirements to tenants, for the purpose of inspecting the Property to determine Trustor's compliance with this Section.

2.5 Parking

If any part of the automobile parking areas included within the Property is taken by condemnation, and before the parking areas are diminished for any other reason, Trustor shall take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Trustor shall furnish to Beneficiary satisfactory assurance of completion thereof free of liens and in conformity with all government zoning and other regulations.

2.6 Use of Property

Trustor represents and warrants to Beneficiary that the Land, the Improvements and their intended use by Trustor comply with all applicable restrictive covenants, zoning and subdivision laws, ordinances, regulations and legal requirements, building codes, flood disaster laws, applicable health and environmental laws and regulations and all other laws, ordinances, regulations, orders and legal requirements issued by any state, federal or municipal authority having or claiming jurisdiction over the Property. Trustor shall comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions applicable to the Property and its intended use, and pay all fees and charges in connection therewith. Without limiting the foregoing, Trustor agrees that it will not use, and will not allow any tenants or subtenants to use, the Property for any activity that violates

any federal or state law. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Property without Beneficiary's prior written consent.

2.7 Condemnation

(a) Proceedings

Trustor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking (including, without limitation, any change in the grade of the Property), whether direct or indirect, of the Property or part thereof or interest therein, and Trustor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking. All awards, payments, damages, direct, consequential and otherwise, claims and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Beneficiary, and all proceeds of any such awards, payments, damages or claims shall be paid to Beneficiary.

(b) Application of Condemnation Proceeds

Beneficiary shall apply any such proceeds in the manner and upon the terms and conditions set forth in Section 2.3(d) relating to the application of insurance proceeds.

(c) Waiver of Condemnation Proceeds

To the extent permitted by applicable law and except as otherwise expressly provided herein, Trustor hereby specifically, unconditionally and irrevocably waives all rights of a property owner granted under applicable law which provide for allocation of condemnation proceeds between a property owner and a lienholder.

2.8 Protection of Beneficiary's Security

Trustor shall give notice to Beneficiary of and shall appear in and defend any action or proceeding that may affect the Property, the interests of Beneficiary or Trustee therein, or the rights or remedies of Beneficiary or Trustee under the Loan Documents. If any such action or proceeding is commenced and there is an uncured Event of Default, or Trustor fails to perform any of the Secured Obligations, Beneficiary or Trustee may, at their option, make any appearances, disburse any sums, pay or settle any claims that have resulted in or may result in a lien of any portion of the Property, make any entries upon the Property and take any actions as may be necessary or desirable to (i) protect or enforce the security of this Deed of Trust, (ii) remedy Trustor's failure to perform the Secured Obligations (without waiving such default by Trustor), or (iii) otherwise protect Beneficiary's or Trustee's interests. Trustor shall pay all

losses, damages, fees, costs and expenses incurred by Beneficiary and Trustee in taking such actions; including, without limitation, reasonable legal fees.

2.9 Reimbursement of Beneficiary's and Trustee's Expenses

All amounts disbursed by Beneficiary and Trustee pursuant to Section 2.8 or any other provision of this Deed of Trust or the other Loan Documents, with interest thereon at the Default Interest Rate (as defined in the Note) from the date of disbursement until repaid, shall constitute a Secured Obligation. All such amounts shall be immediately due and payable and bear interest from the date of disbursement at the lesser of the Default Interest Rate or the maximum rate permitted by law.

2.10 Books and Records on Property

Trustor shall keep and maintain at Trustor's address stated above, or such other place as Beneficiary may approve in writing, books of account and records adequate to reflect correctly the results of operation of the Property and copies of all written contracts, leases and other documents affecting the Property. Such books, records, contracts, leases and other documents shall be subject to examination, inspection and copying at any reasonable time by Beneficiary. Trustor shall furnish to Beneficiary, within twenty (20) days after Beneficiary's request therefor, the following documents, each certified to Beneficiary by Trustor as being true, correct and complete: (a) copies of all leases and other agreements for occupancy or use of all or any portion of the Property, (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit, and the number and term of any renewal options, (c) copies of the most recent real and personal property tax statements for the Property, and (d) copies of the most recent statements for the insurance coverage maintained pursuant to this Deed of Trust.

2.11 Leaseholds

If a leasehold estate constitutes any portion of the Property, Trustor agrees not to amend, modify, extend, renew or terminate such leasehold estate, any interest therein, or the lease granting such leasehold estate without the prior written consent of Beneficiary, which consent may be withheld by Beneficiary in its absolute and sole discretion, or as otherwise expressly provided in the Loan Documents. Consent to one amendment, modification, extension or renewal will not be deemed to be a waiver of the right to require consent to other, future or successive amendments, modifications, extensions or renewals. Trustor agrees to perform all obligations and agreements under said leasehold and will not take any action or omit to take any action which would effect or permit the termination of said leasehold estate. Trustor agrees to promptly notify Beneficiary in writing with respect to any default or alleged default by any party thereto and to deliver to Beneficiary copies of all notices, demands, complaints or other communications received or given by Trustor with respect to any such default or alleged default. Beneficiary will have the option, but not the obligation, to cure any such default and to perform any or all of Trustor's obligations thereunder. All sums expended by Beneficiary in curing any such default will be secured hereby and will be immediately due and payable without demand or notice and will bear interest from date of expenditure at the default rate set forth in the Note.

3. RESERVES

3.1 Deposits

If required by Beneficiary, Trustor shall, at the time of making each monthly installment payment under the Note by Trustor, deposit with Beneficiary a sum, as estimated by Beneficiary, equal to (i) the taxes and special assessments next due on the Property, and (ii) the premiums that will next become due on insurance policies as may be required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse before two months prior to the date when such taxes, special assessments and premiums will become delinquent. Beneficiary may require Trustor to deposit with Beneficiary, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Trustor or the Property as Beneficiary reasonably deems necessary to protect Beneficiary's interests ("Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Beneficiary's option. If required by Beneficiary, Trustor shall promptly deliver to Beneficiary all bills and notices with respect to any taxes, assessments, premiums and Other Impositions. Unless Trustor and Beneficiary otherwise agree in writing, Beneficiary shall not be required to pay Trustor any interest, earnings or profits on any sums deposited with Beneficiary. All sums deposited with Beneficiary under this Section 3.1 are hereby pledged as security for the Secured Obligations.

3.2 Application of Deposits

All such deposited sums shall be held by Beneficiary and applied in such order as Beneficiary elects to pay such taxes, assessments, premiums and Other Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 3 is solely for the added protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. Each transfer of the Property in accordance with Section 4 shall automatically transfer to the transferee all rights of Trustor with respect to any funds deposited hereunder. Upon payment in full of the Secured Obligations, Beneficiary shall promptly refund to Trustor the remaining balance of any deposits then held by Beneficiary.

3.3 Adjustments to Deposits

If the total deposits held by Beneficiary exceed the amount deemed necessary by Beneficiary to provide for the payment of such taxes, assessments, premiums and Other Impositions, such excess shall, provided there is no Event of Default or any event which would constitute an Event of Default if not cured within the time allowed, be credited by Beneficiary on the next due installment or installments of such deposits. If at any time the total deposits held by Beneficiary are less than the amount deemed necessary by Beneficiary to provide for the payment of such taxes, assessments, premiums and Other Impositions, Trustor shall promptly deposit the deficiency with Beneficiary after receipt of written demand from Beneficiary.

3.4 Conditional Waiver

Notwithstanding the foregoing, Beneficiary shall not require the payment of reserves as provided in this Section until a delinquency occurs in the payment of such taxes, assessments, premium and Other Impositions, or until the occurrence of an Event of Default.

4. RESTRICTIONS ON TRANSFER OR ENCUMBRANCE

(a) Neither the Property nor any part thereof or interest therein shall be encumbered, sold (by contract or otherwise), conveyed, leased (except as provided in this Section 4) or otherwise transferred by Trustor, except for Permitted Transfers (as defined in the Loan Agreement); nor shall there be any change in (i) the ownership or control of any of Trustor's stock if Trustor is a corporation, (ii) the ownership or control of any membership interest in Trustor if Trustor is a limited liability company, (iii) the ownership or control of any general partnership interest in Trustor if Trustor is a partnership, (iv) the ownership or control of any beneficial interests in Trustor if Trustor is not otherwise a natural person or persons, or (v) the ownership or control of any stock, membership, any general partnership interest or any other beneficial interest in any corporation, partnership or other entity that has an ownership interest in Trustor, except for Permitted Transfers. Any such action without Beneficiary's prior written consent shall be deemed to increase the risk of Beneficiary and shall constitute an Event of Default if not corrected within five days after Beneficiary's delivery of written demand to Trustor.

(b) Beneficiary may, in its sole discretion, consent to any such action subject to such terms and conditions as Beneficiary may require, including, without limitation, the payment of a transfer review fee, an assumption fee of one percent (1%) of the principal balance of the Note and an increase in the interest rate of the Note.

(c) In the event ownership of the Property or any portion thereof becomes vested in a person other than Trustor herein named, Beneficiary may, without notice to Trustor herein named, whether or not Beneficiary has given written consent to such change in ownership, deal with such successor or successors in interest with reference to this Deed of Trust and the obligations secured hereby, in the same manner as with Trustor herein named, without in any way vitiating or discharging Trustor's liability hereunder or the obligations hereby secured.

5. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

5.1 Grant to Beneficiary

This Deed of Trust constitutes a security agreement pursuant to the Utah Uniform Commercial Code with respect to:

(a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Deed of Trust, and any sums deposited with Beneficiary by Trustor pursuant to the terms of Section 3.1 herein; and

(b) Any and all other property now or hereafter described on any Utah Uniform Commercial Code Financing Statement naming Trustor as Debtor and Beneficiary as

Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Deed of Trust);

and Trustor hereby grants to Beneficiary a security interest in all property described in clauses (a) and (b) above as security for the Secured Obligations. Trustor hereby authorizes Beneficiary to file or cause to be filed such financing statements as reasonably deemed necessary to perfect, preserve, continue, extend in time or maintain the security interests herein contained. Trustor and Beneficiary agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Land. The principal place of business of Trustor (Debtor) is as set forth on page one hereof and the address of Beneficiary (Secured Party) is as set forth on page one hereof.

5.2 Beneficiary's Rights and Remedies

With respect to the Property subject to the foregoing security interest, Beneficiary shall have all of the rights and remedies (i) of a secured party under the Utah Uniform Commercial Code, (ii) provided herein, including, without limitation, the right to cause such Property to be sold by Trustee under the power of sale granted by this Deed of Trust, and (iii) provided by law. In exercising its remedies, Beneficiary may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies. Upon demand by Beneficiary following an Event of Default hereunder, Trustor shall assemble any items of personal property and make them available to Beneficiary at the Land. Beneficiary shall give Trustor at least five days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. The proceeds of any disposition of the personal property collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Beneficiary to the payment of the Secured Obligations in such priority and proportions as Beneficiary in its discretion deems proper.

5.3 Financing Statement

This Deed of Trust constitutes a financing statement and fixture filing with respect to the personal property described in Section 5.1.

The name of the debtor is:

FPA Sandy Mall Associates, LLC
2082 Michelson Drive, Suite 400
Irvine, California 92612

FPA Sandy Pads, LLC
2082 Michelson Drive, Suite 400
Irvine, California 92612

The name of the secured party is:

UMPQUA BANK
Commercial Real Estate Division
PO Box 1580
Roseburg, Oregon 97470-0367

(a) This financing statement covers all existing and future goods located on the Property which are now or in the future owned by the Trustor (debtor) and used in the operation or occupancy of the Property but which are not effectively made real property, including furniture and furnishings, building service equipment, and building materials, supplies and equipment.

(b) Certain of the above goods are or are to become fixtures on the Property described in the attached Exhibit A, and this Deed of Trust is to be recorded in the real estate records as a deed of trust filed as a fixture filing pursuant to Chapter 9a-502 of the Utah Uniform Commercial Code. The name of the record owner of the Property is FPA Sandy Mall Associates, LLC.

(c) Products of the personal property are also covered.

6. ASSIGNMENT OF RENTS AND LEASES

6.1 Assignment of Rents and Leases

As security for the Secured Obligations, Trustor collaterally assigns to Beneficiary and grants Beneficiary a security interest in and to all right, title and interest of Trustor in and to: (a) any and all present and future leases, subleases, and licenses and other agreements for the occupancy or use of all or any part of the Property, and any and all extensions, renewals and replacements thereof (the "Leases"); (b) all cash or security deposits, advance rentals and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, "rents" (as defined in the Act), issues, profits, accounts and revenues (the "Rents") now due or which may become due or to which Trustor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including, without limitation, minimum, additional, percentage and deficiency rents and liquidated damages.

6.2 Collection of Rents

Prior to any Event of Default hereunder, Trustor shall have the right to, and shall, collect and receive all Rents of the Property as trustee for the benefit of Beneficiary and Trustor, apply the Rents so collected first to the payment of taxes, assessments and other charges on the Property prior to delinquency, second to the cost of insurance, maintenance and repairs required by the terms of this Deed of Trust, third to the costs of discharging any obligation or liability of Trustor under the Leases, and fourth to the Secured Obligations, with the balance, if any, to the account of Trustor provided there is no Event of Default. Upon delivery of written notice by Beneficiary to Trustor of an Event of Default hereunder and stating that Beneficiary exercises its rights to the Rents, and without the necessity of Beneficiary entering upon and taking and

maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all Rents from the Property as the same become due and payable, including, without limitation, Rents then due and unpaid, and all such Rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only. Upon delivery of such written notice by Beneficiary, Trustor hereby agrees to direct each tenant or occupant of the Property to pay all Rents to Beneficiary on Beneficiary's written demand therefor, without any liability on the part of said tenant or occupant to inquire further as to the existence of an Event of Default by Trustor. Trustor hereby authorizes Beneficiary as Trustor's attorney-in-fact to make such direction to tenants and occupants upon Trustor's failure to do so as required herein. Payments made to Beneficiary by tenants or occupants shall, as to such tenants and occupants, be in discharge of the payors' obligations to Trustor. Beneficiary may exercise, in Beneficiary's or Trustor's name, all rights and remedies available to Trustor with respect to collection of Rents. Nothing herein contained shall be construed as obligating Beneficiary to perform any of Trustor's obligations under any of the Leases.

6.3 Trustor's Representations and Warranties

Trustor hereby represents and warrants to Beneficiary that Trustor has not executed and will not execute any other assignment of said Leases or Rents, that Trustor has not performed and will not perform any acts and has not executed and will not execute any instrument which would prevent Beneficiary from exercising its rights under this Section 6, and that at the time of execution of this Deed of Trust there has been no anticipation or prepayment of any of the Rents of the Property for more than two (2) months prior to the due dates thereof. Trustor further represents and warrants to Beneficiary that all existing Leases are in good standing and there is no default thereunder, whether by Trustor or lessee, and that, to Trustor's knowledge, there is no event or condition which, with notice or the passage of time or both, would be a default thereunder. Trustor shall execute and deliver to Beneficiary such further assignments of Rents and Leases of the Property as Beneficiary may from time to time request.

6.4 Leases of the Property

Trustor covenants and agrees that all future Leases and modifications of existing Leases will include a provision that prohibits the use of the Property for any activity that violates any federal or state law. Trustor shall comply with and observe Trustor's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or setoff. At Beneficiary's request, Trustor shall furnish Beneficiary with executed copies of all Leases now existing or hereafter made and all Leases hereafter entered into shall use a form previously approved by Beneficiary. All nonresidential Leases and tenants under such Leases shall be subject to Beneficiary's prior written approval, and shall specifically provide that the tenant attorns to any person succeeding to the interest of Trustor upon any foreclosure of this Deed of Trust or conveyance in lieu thereof. Such attornment shall be in such form as Beneficiary may approve and shall provide that tenant shall not have the right of set off or defense to payment of rents for any event or act that occurred prior to such successor obtaining title to Trustor's interest except to the extent such event or act is continuing at the time such successor obtains such title. Tenant shall also agree to execute such further evidences of attornment as Beneficiary may from time to time request. Without

Beneficiary's written consent, Trustor shall not (a) collect or accept payment of any Rents more than one month prior to the due dates thereof; (b) modify, surrender or terminate any non-residential Lease; (c) waive, discharge, release or modify the obligations of any tenant or other occupant of the Property under any non-residential Lease of its obligations under such Lease; (d) modify any non-residential Lease or modify the obligations of any tenant or other occupant under any such Lease of its obligations under such Lease; or (e) request or consent to the subordination of any non-residential Lease to any lien subordinate to this Deed of Trust. Any attempted action in violation of this Section 6.4 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee) shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

6.5 Beneficiary in Possession; Appointment of Receiver

(a) Upon any Event of Default, Beneficiary may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Trustor could do the same, including, without limitation, the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Property, the removal and eviction of tenants and other occupants, the making of alterations and repairs to the Property, and the execution and termination of contracts providing for management or maintenance of the Property, all on such terms as are deemed best by Beneficiary to protect the security of this Deed of Trust. From and after any Event of Default, if any owner of the Property shall occupy the Property or part thereof such owner shall pay to Beneficiary in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Beneficiary shall be entitled to remove such owner from the Property by any appropriate action or proceedings. Following an Event of Default, Beneficiary shall be entitled (regardless of the adequacy of Beneficiary's security) to the appointment of a receiver, and Trustor hereby consents to the appointment of such receiver.

(b) Said receiver may serve without bond and may be Beneficiary or an employee of Beneficiary. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by such receivers, all the rights and powers granted to Beneficiary in this Section 6. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property. All costs and expenses incurred by any receiver or its agent shall constitute a part of the Secured Obligations.

6.6 Application of Rents

All Rents collected subsequent to delivery of written notice by Beneficiary to Trustor of an Event of Default shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the Rents, including, without limitation, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor under the Leases, and then to other Secured

Obligations. Beneficiary or the receiver shall be liable to account only for those Rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section.

6.7 Deficiencies

To the extent, if any, that the costs of taking control of and managing the Property, collecting the Rents, and discharging obligations and liabilities of Trustor under the Leases, exceed the Rents of the Property, the excess sums expended for such purposes, plus interest, shall constitute a Secured Obligation. Such excess sums shall be payable upon demand by Beneficiary and shall bear interest from the date of disbursement at the lesser of the Default Interest Rate or the maximum rate permitted by law.

6.8 Beneficiary Not Mortgagee in Possession

Nothing herein shall constitute Beneficiary a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry upon and taking possession by a receiver shall not constitute possession by Beneficiary.

6.9 Enforcement

Beneficiary may enforce this assignment of rents and leases without first resorting to or exhausting any security or collateral for the Secured Obligations.

6.10 Utah Uniform Assignment of Rents Act

This Section 6 is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-26-101 et seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of Section 6 and the provisions of the Act, the provisions of the Act will control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

7. LOAN AGREEMENT

7.1 Advances

Trustor agrees to comply with the covenants and conditions of the Loan Agreement. The Loan Agreement is hereby incorporated herein and made a part of this Deed of Trust. All advances made by Beneficiary pursuant to the Loan Agreement shall constitute a Secured Obligation, and such advances shall be deemed to be obligatory. All such sums shall bear interest from the date of disbursement at the rate stated in the Note.

7.2 Assignment of Claims

From time to time as Beneficiary deems necessary to protect Beneficiary's interest, Trustor shall, upon request of Beneficiary, execute and deliver to Beneficiary in such form as

Beneficiary shall direct, assignments of any and all rights or claims which relate to the construction of the Improvements, and which Trustor may have against any party supplying or who has supplied labor, materials or services in connection with the construction of the Improvements.

7.3 Default Under the Loan Agreement

Upon an Event of Default, Beneficiary may, at its option, with or without entry upon the Property, exercise any of the rights or remedies provided in the Loan Agreement, exercise any of the rights or remedies provided in this Deed of Trust, or do both.

8. EVENTS OF DEFAULT

8.1 Events of Default

Any one or more of the following is an "Event of Default":

(a) Trustor fails to make any payment under the Note, this Deed of Trust, or any of the other Loan Documents to which it is a party when due.

(b) There is a default under any of the Permitted Exceptions, if not cured within any cure period given in the Permitted Exceptions.

(c) There is an Event of Default as defined in the Loan Agreement or any of the other Loan Documents.

(d) There is an Event of Default under the Indemnity Agreement or the Guaranty.

(e) Trustor fails to perform any other covenant, agreement or obligation under this Deed of Trust or any of the other Loan Documents to which it is a party, if not cured within the time allowed.

8.2 Form of Notice

At Beneficiary's option, any written notice of default given to Trustor under Section 8.1 may be given in the form of a statutory notice of default under applicable law or any other form as Beneficiary may elect.

9. REMEDIES

9.1 Acceleration Upon Default; Additional Remedies

Upon any Event of Default, Beneficiary may, at its option and without notice to or demand upon Trustor, exercise any one or more of the following actions:

(a) Declare all the Secured Obligations immediately due and payable.

(b) Bring a court action to enforce the provisions of this Deed of Trust or any of the other Loan Documents.

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

(d) Judicially or non-judicially foreclose this Deed of Trust in accordance with applicable law.

(e) Cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law.

(f) Obtain a deficiency judgment if the net sales proceeds of any sale of the Property under the power of sale granted by this Deed of Trust are insufficient to pay in full all of the Secured Obligations.

(g) Elect to exercise its rights with respect to the assignment of Leases and the Rents, including without limitation all of the rights and remedies of an assignee of rents under applicable law.

(h) Exercise any or all of the other rights and remedies under this Deed of Trust and the other Loan Documents.

(i) With respect to all or any part of the Property that constitutes personalty, exercise any and all rights and remedies of a secured party under the Uniform Commercial Code – Secured Transactions as adopted in the Property Jurisdiction.

(j) Beneficiary may make any payment or perform any other obligation under the Loan Documents which Trustor has failed to make or perform, and Trustor hereby irrevocably appoints Beneficiary as the true and lawful attorney-in-fact for Trustor to make any such payment and perform any such obligation in the name of Trustor, which appointment is coupled with Beneficiary's interest in the Property. All payments made and expenses (including attorneys' fees and legal assistant's fees) incurred by Beneficiary in this connection, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Trustor to Beneficiary.

(k) Notwithstanding the availability of legal remedies, Beneficiary will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Trustor to cure or refrain from repeating any default.

(l) Beneficiary may enter and take possession of the Property without seeking or obtaining the appointment of a receiver and may employ a managing agent for the Property, and if applicable, may complete the development and construction described in the Loan

Agreement with respect to all or any part of the Property, either in Beneficiary's name or in the name of Trustor.

- (m) Exercise any other right or remedy available under law or in equity.

9.2 Prepayment Premium

If the Note provides for payment of a prepayment premium, such prepayment premium shall be payable by Trustor with respect to any voluntary or involuntary payment of principal under the Note before the maturity date stated in the Note, except as otherwise specifically provided in the Loan Documents. Trustor expressly agrees that any such principal payment made after an Event of Default shall require payment of the prepayment premium notwithstanding any acceleration of the Note by Beneficiary.

9.3 Exercise of Power of Sale

Upon an Event of Default, Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose (or cause the Trustee to foreclose) the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default, Trustee (at Beneficiary's request) or Beneficiary may also, at any time after the filing of a complaint to foreclose this Security Instrument, request appointment of a receiver of the Property by the court in which such complaint is filed, and Trustor hereby consents to such appointment. Without limiting the foregoing:

(1) Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described herein, or specifically enforce any of the covenants hereof.

(2) Beneficiary may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with Utah Code Annotated § 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Trustor, will sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, will be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale (subject to Beneficiary's (or its nominee's) right to make a credit bid as set forth herein or pursuant applicable law). The person conducting the sale may, for any cause deemed expedient, postpone

the sale from time to time until it is completed and, in every such case, notice of postponement will be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale will be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee will execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts will be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee will apply the proceeds of the sale as follows:

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

SECOND: To payment of the obligations secured by the trust deed.

THIRD: The balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

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

For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premium, and similar amounts, if any, owing from time to time under the Note will constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property, and (ii) Beneficiary may add all default interest, late charges, any prepayment premium, and similar amounts owing from time to time under the Note to the principal balance of the Note, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Property pursuant to this Deed of Trust.

9.4 Application of Sale Proceeds

Except as may otherwise be required by law, the proceeds of any sale under this Deed of Trust shall be applied in the order set forth in Section 9.3 above.

9.5 Waiver of Order of Sale and Marshalling

Beneficiary shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of any remedies provided herein. To the fullest extent permitted by law, Trustor, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof, hereby waives any and all right to require marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein, or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust.

9.6 Nonwaiver of Defaults

The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

9.7 Expenses During Redemption Period

If this Deed of Trust is foreclosed as a mortgage and the Property sold at a foreclosure sale, the purchaser may during any redemption period allowed, make such repairs or alterations on the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the lesser of the Default Interest Rate or the maximum rate permitted by law, shall be added to and become a part of the amount required to be paid for redemption from such sale.

9.8 Foreclosure Subject to Tenancies

Beneficiary shall have the right at its option to foreclose this Deed of Trust subject to the rights of any tenant or tenants of the Property.

9.9 Remedies Cumulative; No Merger

To the extent permitted by law, every right and remedy provided in this Deed of Trust is distinct and cumulative to all other rights or remedies under this Deed of Trust or afforded by law or equity or any other agreement between Beneficiary and Trustor, and may be exercised concurrently, independently or successively, in any order whatsoever. Beneficiary may exercise any of its rights and remedies at its option without regard to the adequacy of its security. In the event of a foreclosure of This Deed of Trust or any other mortgage or deed of trust securing the Secured Obligations, the Secured Obligations then due Beneficiary will not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Obligations.

9.10 Beneficiary's and Trustee's Expenses

Trustor shall pay all of Beneficiary's and Trustee's expenses incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any suit is filed, including, without limitation, legal fees and disbursements, foreclosure costs, title charges, and expenses incurred in any bankruptcy, reorganization, liquidation, receivership or similar proceeding. All such sums, with interest thereon, shall be additional Indebtedness of Trustor secured by this Deed of Trust. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the lesser of the Default Interest Rate or the maximum rate permitted by law.

9.11 Deficiency Rights

The assignment of the Rents and Leases and all other liens, assignments, security interests, rights and remedies granted to Beneficiary hereunder or under any of the Secured Obligations, and all covenants, representations, warranties and obligations of Trustor which are not satisfied or discharged by any foreclosure of the Property, shall, to the fullest extent permitted by law, survive such foreclosure and remain in full force and effect thereafter, it being acknowledged and agreed that the Secured Obligations and all other obligations of Trustor and rights and remedies of Beneficiary hereunder are contractual in nature. Such obligations, rights and remedies, and all liens, assignments and security interests granted to Beneficiary hereunder and under any of the Secured Obligations (but excluding any lien against the Property or portion thereof that is foreclosed), shall not be extinguished by a foreclosure pursuant this Deed of Trust. Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, any Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law. To the extent *Utah Code Annotated* § 57-1-32, as now existing or hereafter amended, or any other statute requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

(1) The Property shall be valued "as is" and "with all faults" and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure.

(2) An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.

9.12 Reinstatement

If Trustor, Trustor's successor interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan with three

(3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party will pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee will record a notice of cancellation of the pending sale. Furthermore, in addition to any Trustor payment obligations under this Deed of Trust, Trustor shall pay all costs, fees and expenses incurred by Trustee and Trustee's agents and counsel for accountings and reinstatement quotes as may be required by *Utah Code Annotated* § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Deed of Trust.

10. GENERAL

10.1 No Offset

Trustor's obligation to timely pay and perform all obligations under the Note, this Deed of Trust, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance; including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Trustor or any guarantor may have or claim against Beneficiary or any other person or entity. The foregoing shall not constitute a waiver of any claim or demand which Trustor or any guarantor may have in damages or otherwise against Beneficiary or any other person or entity; provided that Trustor shall maintain a separate action thereon.

10.2 Application of Payments

Except as applicable law or this Deed of Trust may otherwise provide, all payments received by Beneficiary under the Note or this Deed of Trust may be applied by Beneficiary to the Secured Obligations in such order as Beneficiary, at its option, may determine.

10.3 Appraisal Costs

In the event the Financial Institutions Reform, Recovery, and Enforcement Act, as amended, any regulatory agency, or any internal policy of Beneficiary requires Beneficiary to obtain an appraisal of the Property, Trustor shall reimburse Beneficiary on demand for payment of the costs of such appraisal.

10.4 Imposition of Tax

For purposes of this Section, "Tax" shall mean:

(a) a specific tax on deeds of trust or on all or any part of the Indebtedness secured by a deed of trust; or (b) a specific tax on the owner of the Property covered by a deed of trust which the taxpayer is authorized or required to deduct from payments on the deed of trust; or (c) a tax on property covered by a deed of trust chargeable against a beneficiary or trustee under the deed of trust or the holder of the note secured by the deed of trust; or (d) a specific tax (other than an income tax or a gross receipts tax) on all or any portion of the obligations secured hereby or on payments of principal and interest made by a trustor under a deed of trust. If any Tax is enacted subsequent to the date of this Deed of Trust, enactment of the Tax shall constitute an Event of Default, and Beneficiary may exercise any or all of the remedies available to it upon the

occurrence of any Event of Default, unless the following conditions are met: (i) Trustor may lawfully pay the Tax without causing any resulting economic disadvantage or increase of tax to Beneficiary or Trustee; and (ii) Trustor pays the Tax (including any tax on the payment made) within 30 days after notice from Beneficiary that the tax law has been enacted.

10.5 Reconveyance

Upon payment of all Secured Obligations, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing the Secured Obligations to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Such person or persons shall pay Trustee's reasonable costs incurred in so reconveying the Property.

10.6 Trustee

(a) In accordance with applicable law, Beneficiary may from time to time appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

(b) At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and without affecting the personal liability of any person for payment of the Obligations or the effect of this Security Instrument upon the remainder of said Property, Trustee may (a) reconvey any part of said Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

(c) Trustee accepts this trust when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law.

10.7 Beneficiary's Powers

(a) Without affecting the liability of any person for payment or performance of the Secured Obligations or any of Beneficiary's rights or remedies, Beneficiary, at its option, may extend the time for payment of the Secured Obligations or any part thereof, reduce payment thereon, release anyone liable thereon, accept a renewal note or notes therefor, modify the terms and time of payment thereof, release the lien of this Deed of Trust on any part of the Property, take or release other or additional security, release or reconvey or cause to be released or reconveyed all or any part of the Property, or consent and/or cause Trustee to consent to the making of any map or plat of the Property, consent or cause Trustee to consent to the granting of any easement or creating any restriction on the Property, or join or cause Trustee to join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof.

(b) Trustor shall pay Beneficiary a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Beneficiary's option, for any such action if taken at Trustor's request.

10.8 Subdivision

Trustor hereby consents to a subdivision of the Property, if Beneficiary, in its sole discretion, determines that a subdivision of the Property is necessary or desirable to preserve the lien of this Deed of Trust, or to permit Beneficiary to foreclose on only a portion of the Property.

10.9 Subrogation

Beneficiary shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Note or any other Indebtedness secured hereby.

10.10 Limitation on Interest and Charges

The interest, fees and charges under the Loan Documents shall not exceed the maximum amounts permitted by any applicable law. If any such interest, fee or charge exceeds the maximum, the interest, fee or charge shall be reduced by the excess and any excess amounts already collected from Trustor shall be refunded. Beneficiary may refund such excess either by treating the excess as a prepayment of principal under the Note or by making a direct payment to Trustor. If Beneficiary elects to treat the excess as a prepayment of principal, Trustor shall not be obligated to pay any prepayment premium set forth in the Note. The provisions of this Section shall control over any inconsistent provision in the Loan Documents.

10.11 Additional Documents; Power of Attorney

Trustor, from time to time, shall execute, acknowledge and deliver to Beneficiary upon request, and hereby irrevocably appoints Beneficiary its attorney-in-fact, exercisable upon an Event of Default, to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Beneficiary, as Beneficiary may request in order to perfect, preserve, continue, extend in time or maintain the assignments herein contained, the lien and security interest under this Deed of Trust, and the priority thereof. Trustor shall pay to Beneficiary upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

10.12 Waiver of Statute of Limitations

To the full extent Trustor may do so, Trustor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust.

10.13 Forbearance by Beneficiary Not a Waiver

Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Beneficiary of any particular default shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the

foregoing, the acceptance by Beneficiary of payment of any of the Secured Obligations after the due date thereof shall not be a waiver of Beneficiary's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the Indebtedness secured by this Deed of Trust, nor shall Beneficiary's receipt of any awards, proceeds or damages under Sections 2.3 and 2.7 operate to cure or waive Trustor's default in payment of the Secured Obligations.

10.14 Entire Agreement; Modifications and Waivers

This Deed of Trust, together with the other Loan Documents, constitutes the entire understanding and agreement of Trustor and Beneficiary with respect to the Loan. The Loan Documents supersede all prior negotiations, discussions, and agreements with respect to the Loan, may not be contradicted by evidence of any alleged oral agreement, and may not be waived, changed, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought. PURSUANT TO *UTAH CODE ANNOTATED* SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

10.15 Notice

Any notice to Trustor under this Deed of Trust shall be to the address noted above or such other address as may be designated by Trustor in writing and shall be deemed to have been given on the date delivered in the case of personal delivery or, if mailed, three days after the postmark thereof.

10.16 Governing Law; Severability; Captions

Except to the extent that the federal laws of the United States of America provide Beneficiary with greater rights or remedies, this Deed of Trust shall be governed by the laws of the Property Jurisdiction. If any provision or clause of this Deed of Trust conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and Sections of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

10.17 Definitions

As used herein: the term "Trustor" means Trustor herein named, together with any subsequent owner of the Property or any part thereof or interest therein; the term "Trustee" means the Trustee herein named, together with any successor Trustee; and the term "Beneficiary" means Beneficiary herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

10.18 Joint and Several; Successors and Assigns; Agents

If more than one person has executed this Deed of Trust as "Trustor," the representations, covenants, warranties and obligations of all such persons hereunder will be joint and several. This Deed of Trust shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Section 4. In exercising any rights hereunder or taking actions provided for herein, Beneficiary and Trustee may act through their respective employees, agents or independent contractors as authorized by Beneficiary and Trustee.

10.19 Number; Gender

This Deed of Trust shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

10.20 Time

Time is of the essence in connection with all obligations of Trustor herein.

10.21 Request for Notice

Trustor hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to it at its address set forth at the beginning of this Deed of Trust.

10.22 Assignment of Loan Documents

Beneficiary may assign the Loan Documents in whole or in part. Beneficiary may make available to any proposed assignee or participant all credit and financial data with respect to Trustor and any guarantor as may be in the possession of Beneficiary. Trustor agrees to provide any additional information that any proposed assignee or participant may reasonably request.

10.23 Estoppel Certificate

Trustor shall, within ten days after receipt of Beneficiary's written request, furnish Beneficiary or any other party designated by Beneficiary with a written statement, duly acknowledged, setting forth the amount of the Secured Obligations and otherwise confirming the status of the Secured Obligations, the Property and the Loan Documents.

10.24 Certain Obligations Unsecured

Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "Unsecured Obligations"):

- (a) any obligations evidenced by or arising under the Indemnity Agreement and Guaranty,
- (b) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Substances (as defined in the Indemnity Agreement) and are the same or have the same effect as any of the obligations evidenced by or arising under the Indemnity Agreement, and
- (c) any

obligations evidenced by or arising under any guaranty of the Loan, including, without limitation, the Guaranties. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this Section shall, in itself, impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

10.25 State Specific Provisions

(a) In the event of any inconsistencies between the terms and conditions of this Section 10.25, and the other terms and conditions of this Agreement, the terms of this Section 10.25 will control and be binding.

(b) Trustor hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder and under any other deed of trust affecting the Property now or at any time in the future be mailed to it at the address set forth in the Loan Agreement.

(c) Trustor waives to the extent permitted by law all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of Utah pertaining to the rights and remedies of sureties.

(d) With respect to the Property, notwithstanding anything contained herein to the contrary, Trustor waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, *Utah Code Annotated* § 78B-6-901 (formerly *Utah Code Annotated* § 78-37-1). Notwithstanding anything to the contrary, Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under *Utah Code Annotated* § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

10.26 Additional State-Specific Provisions

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

(b) Water Rights. Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah

State Engineer or Utah Division of Water Rights, Salt Lake County, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Security Instrument.

(1) Trustor shall diligently place to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights. To the extent Trustor cannot place any quantity of water under the Water Rights to a beneficial use, Trustor shall promptly file a nonuse application with the Utah Division of Water Rights and diligently defend the nonuse application and the Water Rights against any claim of forfeiture or abandonment.

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

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

(4) Trustor and, to Trustor's knowledge, its predecessors in interest have placed to a beneficial use all of the water to which it has a right to divert and beneficially use under the Water Rights sufficient to prevail against any claim of partial or complete forfeiture or abandonment of the Water Rights.

As used herein, "Water Rights" in addition to any foregoing meaning assigned in this Deed of Trust, means and includes all water and water rights, wells and well rights, canals and canal rights, ditches and ditch rights, springs and spring rights, and reservoirs and reservoir rights appurtenant to or associated with any decreed or undecreed, tributary, non-tributary or not non-tributary, surface or underground or appropriated or unappropriated water pertaining to, appurtenant to or used with respect to the Land, and all shares of stock in water, ditch, lateral and canal companies, well permits and all other evidences of any of such rights; all deposits or other security now or hereafter made with or given to utility companies by Trustor; subject to the assignment to Beneficiary set forth herein, all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Water Rights or the ownership, use, management, operation or leasing of the Water Rights, including those past due and unpaid; all right, title and interest in the Water Rights resulting from the Utah State Engineer's approval of any application filed by Trustor to change the point of diversion, manner and/or place of use of the Water Rights, either in whole or in part; all estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in any of the foregoing, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Water Rights; and all accessions to, substitutions for and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims of, any of the foregoing.

(c) Amendments to Utah Code Annotated. In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(d) Receiver. In addition to any other rights provided for in this Deed of Trust, Beneficiary may appoint a receiver as and when provided in the Utah Uniform Commercial Real Estate Receivership Act, *Utah Code Annotated* § 78B-21-101 et seq.

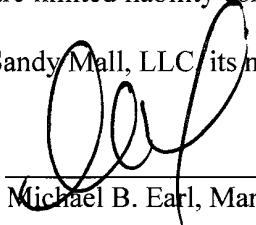
[Signature Page Follows]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

"Trustor"

FPA SANDY MALL ASSOCIATES, LLC,
a Delaware limited liability company

By: GF Sandy Mall, LLC its manager

By: 
Michael B. Earl, Manager

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

State of California)

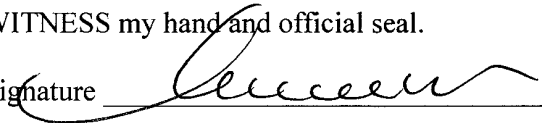
County of ORANGE)

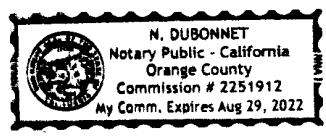
On September 23 2021, before me, N. Dubonnet, Notary Public
(insert name and title of the officer)

personally appeared Michael B. Earl, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

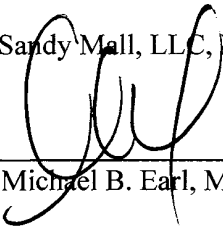
Signature  (Seal)



FPA SANDY PADS, LLC, a Delaware limited liability company

By: FPA SANDY MALL ASSOCIATES, LLC, its sole member

By: GF Sandy Mall, LLC, Manager

By: 
Michael B. Earl, Manager

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

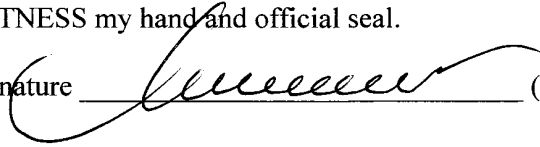
State of California)
County of ORANGE)

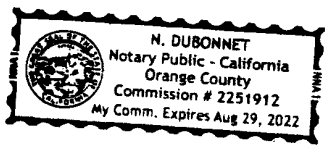
On September 23, 2021, before me, N. Dubonnet, Notary Public
(insert name and title of the officer)

personally appeared Michael B. Earl, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature  (Seal)



**EXHIBIT A
to Deed of Trust**

Legal Description

PARCEL 1:

Lots 1 and 8, SANDY MALL SUBDIVISION, according to the official plat, recorded May 23, 2016 as Entry No. 12284382 in Book 2016P of Plats at Page 113, official records.

PARCEL 1A:

Benefits, easements and parking rights contained in that certain Restrictive Covenants, Easements and Maintenance Agreement recorded March 18, 1998 as Entry No. 6895235 in Book 7913 at Page 635, official records.

PARCEL 1B:

Benefits, easements and parking rights contained in that certain Declaration of Covenants, Conditions and Restrictions and Grants of Easements for Sandy Mall Subdivision Sandy, Utah, recorded September 29, 2016 as Entry No. 12377304 in Book 10482 at Page 2005, official records.

PARCEL 2:

Lots 2, 3 and 5, SANDY MALL SUBDIVISION, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder, recorded May 23, 2016 as Entry No. 12284382 in Book 2016P at Page 113.

PARCEL 2A:

The appurtenant nonexclusive easements for vehicular and pedestrian ingress and egress, vehicular parking, and utilities as contained in that certain Restrictive Covenants, Easements and Maintenance Agreement recorded March 18, 1998 as Entry No. 6895235 in Book 7913 at Page 635 in the official records of the Salt Lake County Recorder.

PARCEL 2B:

The appurtenant non-exclusive easements for access and passage, parking, utilities, and drainage as contained in that certain Declaration of Covenants, Conditions and Restrictions and Grants of Easements for Sandy Mall Subdivision recorded September 29, 2016 as Entry No. 12377304 in Book 10482 at Page 2005 in the official records of the Salt Lake County Recorder.