

After recording, return to:

Attn: Post-Closing Department
First Continental Investment Co., Ltd.
5718 Westheimer, Suite 1450
Houston, Texas 77057

CT-148104-CAF

TIN 12-003-0038 & 12-004-0031

(Space above this line for recording purposes only.)

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

STATE OF UTAH §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF UTAH §

This DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Deed of Trust*"), is entered into this 29 day of October, 2021, by CND-RIDGEVIEW NORTH, LLC, a Utah limited liability company (the "*Trustor*"), Trustor having an address for notice hereunder at 1111 North Post Oak Road, Houston, Texas 77055, to T. Richard Davis, Trustee (together with any substitute being hereinafter referred to in such capacity as "*Trustee*"), having an address for notice hereunder at 111 South Main Street, Suite 2400, Salt Lake City, Utah 84101, for the benefit of FIRST CONTINENTAL INVESTMENT CO., LTD., a Texas limited partnership, whose address for notice hereunder is 5718 Westheimer, Suite 1450, Houston, Texas 77057 ("*Beneficiary*").

W I T N E S S E T H:

**ARTICLE 1
DEFINITIONS**

1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

(a) **Acreage:** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(b) **Additional Utility Capacity:** All licenses, contracts, permits, living unit equivalents, rights, and interests, if any, related or incidental to the Utilities and not dedicated or reserved to the Land, whether considered to be real, personal or mixed property, including the right and authority to transfer or relinquish any or all of the same.

(c) **Advances:** Any and all reasonable expenses or costs, including but not limited to attorneys' fees and costs, incurred or expended by, imposed upon, or asserted against Beneficiary in connection with the following:

(1) The cure by Beneficiary of any breach by Trustor of any Obligations contained in any Security Document;

(2) Any action deemed reasonably necessary by Beneficiary to secure, preserve or protect the Trust Estate, the Indebtedness, the liens and security interests created by the Security Documents, or their priority and quality, and any of Beneficiary's rights and remedies under the Security Documents; and

(3) Any actual or asserted matter, claim, demand, lawsuit, condemnation, judgment, liability, loss, injury, damage, or penalty against or adverse to:

(i) the liens and security interests created by the Security Documents or their priority and quality;

(ii) the Indebtedness;

(iii) the Trust Estate;

(iv) the Obligations;

(v) Beneficiary, by reason of performance or non-performance of any act to be performed by Trustor in connection with the Trust Estate, the Indebtedness, or the Obligations;

(vi) Beneficiary, by reason of the good faith exercise of any right or remedy; or

(vii) Beneficiary, by reason of any matter or transaction arising out of or in any way connected with the Trust Estate, title to the Trust Estate, the Security Documents, (including, without limitation, their priority and quality), the Indebtedness, or any escrow connected with any Security Document or the ownership and operation of the Trust Estate.

Notwithstanding anything contained in the Security Documents to the contrary, Beneficiary shall not make any Advances with respect to the items enumerated above prior to the expiration of the applicable curative period with respect to an Event of Default of Trustor under the Security Documents.

(d) **Affiliate:** When used with respect to any Person, any other Person which directly or indirectly, controls or is controlled by or is under common control with such Person and shall specifically include any manager or member of a Person.

(e) **Buildings:** Any and all building structures, improvements, parking areas, air conditioning towers, sidewalks, fences, gates, and any and all additions, alterations, replacements, accessions or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof.

(f) **Event of Default:** Any act or occurrence described in *Article 6* below.

(g) **Financial Statements:** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(h) **Fixtures:** All materials, fixtures, goods and equipment, including additions thereto, which Trustor now has or at any time hereafter acquires that are now or at any time

hereafter attached to or situated upon or affixed to the Land and Buildings, including but not limited to,

(1) all electrification equipment and power lines (whether owned individually or jointly with others), water supply equipment and water tanks,

(2) all lighting, plumbing, ventilating, and communications equipment, telephone and television equipment and lines, electrical equipment, air conditioning equipment, engines, machinery, transformers, pumps, motors, compressors, sprinklers, electrical wiring and pipe,

(3) all built-in equipment as shown by plans and specifications,

(4) all accessions and appurtenances thereto, and all renewals and replacements of or substitutions for any of the foregoing,

(5) all installations of any kind specially designed for the Trust Estate, and

(6) all accessories, parts, replacements and substitutions thereof and additions thereto and any item which now or hereafter constitutes a “fixture” as a matter of law and any item now or hereafter considered a “fixture” under Chapter 9 of the Utah Uniform Commercial Code (Secured Transactions).

(i) **Governmental Authority:** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(j) **Impositions:** All real estate and personal property taxes, water, gas, sewer, electricity and other utility rates and charges, charges for any easement, license or agreement maintained for the benefit of or affecting the Trust Estate, and all other taxes or common area charges and assessments and any related interest, costs or penalties, of any kind whatsoever whether general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Trust Estate or the ownership, development, use, occupancy or enjoyment thereof.

(k) **Indebtedness:** The principal of, interest on and all other amounts, payments and premiums due under, described in or secured by the Note, the Loan Agreement, and the other Security Documents, including without limitation, all renewals, extensions and modifications thereof and all advances made thereunder (including any Advances made hereunder).

(l) **Land:** The real estate or interest therein described on *Exhibit A* which is attached hereto and made part hereof.

(m) **Leases:** Any and all leases, subleases, licenses, concessions or other agreements (written or oral, now or hereafter in effect) which grant a possessory interest in and to, or the right to use, the Trust Estate or any portion thereof.

(n) **Legal Requirements:**

(1) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any

way applicable to Trustor, or the Trust Estate, including those matters affecting the ownership, development, use, occupancy, operation, maintenance, repair or reconstruction thereof,

(2) Trustor's presently or subsequently effective bylaws and articles of incorporation, regulations, articles of organization, partnership agreement, limited partnership agreement, joint venture agreement, trust agreement or organizational documents of any other forms of business association,

(3) any and all Leases,

(4) any and all other contracts of any nature by which Trustor may be bound,
and

(5) any and all restrictive covenants applicable to the Trust Estate.

(o) **Loan Agreement:** That certain Residential Development Loan Agreement of even date herewith by and between Trustor and Beneficiary.

(p) **Lots (or individually, a "Lot"):** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(q) **Trust Estate:** The Land, Buildings, Fixtures, Personalty, and Rents, together with:

(1) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of Trustor in anyway appertaining thereto, and all right, title and interest of Trustor in and to (i) any streets, alleys, or strips or gores of land adjoining the Land and any real estate subdivision comprising the same or any part thereof; and (ii) the Oil and Gas Rights, Utilities and Additional Utility Capacity;

(2) all additions, betterments, appurtenances, substitutions, replacements, reversions and proceeds thereof and thereto and all reversions and remainders therein;

(3) all of Trustor's right, title and interest in and to any awards, remuneration, settlements or compensation made or to be made by any Governmental Authority to the present or any subsequent owner of the Land, Buildings, Fixtures or Personalty, including those for any vacation of, or change of grade in, any streets affecting the Land;

(4) all security deposits pursuant to Leases, tax and insurance contributions and escrows or similar contributions;

(5) all proceeds of insurance monies paid by reason of loss or damage by lightning, fire, explosion, tornado, windstorm or other hazard to the whole or any part of the Trust Estate;

(6) all of Trustor's right, title and interest (but none of Trustor's obligations) in and to all utility rights, now or hereafter acquired, in connection with (i) the Utilities, (ii) Additional Utility Capacity which is now or hereafter owned or controlled by Trustor or any Affiliate, to the full extent that such Additional Utility Capacity is necessary to

allow development, marketing and use of the Trust Estate for its highest and best use, (iii) all commitments issued in connection with the Utilities and the Additional Utility Capacity;

(7) all Utility Reimbursables;

(8) the proceeds from the sale of the Trust Estate and property interests comprising the Trust Estate that result from the sale or foreclosure thereof by Beneficiary or any assignee thereof;

(9) all books, records, and documents relating to the Trust Estate;

(10) all contracts now or hereafter entered into by and between Trustor and any contractor, or between Trustor and any other party as well as all right, title and interest of Trustor under any subcontracts relating to the Mortgaged Property;

(11) all right, title and interest of Trustor in and to permits and licenses, plans, specifications and drawings (including, but not limited to, street plans, plot plans, foundation plans, elevations and architectural plans, studies and analyses), heretofore or hereafter prepared by any architect or engineer relating to the Trust Estate or any real estate subdivision comprising the same;

(12) all of Trustor's right, title and interest in and to all present or future contracts, development agreements, reimbursement contracts, contracts of sale and options and contract rights relating to the disposition and/or development of any of the Trust Estate, including, without limitation, all proceeds, escrows, earnest money, deposits and bonds held by Trustor in connection therewith;

(13) the balance of (i) every deposit account (general or special, time or demand), now or hereafter existing, of Trustor or third parties held for the benefit of Trustor, (ii) any other accounts (in whatever character the same may appear) of Trustor, (iii) the Interest Reserve (as such phrase is defined in the Loan Agreement), and (iv) all interest and earnings on any of the foregoing items (i) through (iii), which balances may at any time (A) be on deposit with, or held by or under the name of Beneficiary or (B) due from or at any time credited or debited by or due from Beneficiary in the name of Trustor;

(14) all of Trustor's right, title and interest as "declarant" under any declaration of covenants, conditions and restrictions or similar instrument now or hereafter associated with or recorded in the office of the Utah County Recorder of Deeds, which encumber and bind the Land or any real estate subdivision comprising the same and all rights of Trustor to use the amenities constructed or to be constructed for the use of owners of the Land;

(15) All of Trustor's right, title, and interest in and to all present or future licenses, authorizations, permits, certificates, variances, consents, approvals and other permits necessary or appropriate to permit the development, construction, reconstruction, alteration, addition, improvement, repair, restoration, use, operation and management of the Trust Estate and Improvements (as such term is defined in the Loan Agreement); and

(16) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

As used in this Deed of Trust, the term “*Trust Estate*” shall be expressly defined as meaning all, or where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

(r) **Net Sales Proceeds:** The total amount of consideration received either directly or indirectly by Trustor pursuant to a sale of all or any portion of the Trust Estate (including any reimbursements for utilities of any type, landscaping or other such items), less all reasonable and customary closing costs and adjustments paid by Trustor to bona fide third parties (e.g., Persons unrelated to Trustor or any Person controlled by or under common control with Trustor) in connection with the granting and approval of any partial release, including, without limitation, title insurance premiums, title company charges, the “Release Processing Fee” (hereafter defined), brokerage commissions (not to exceed 6% of the gross sales price, including those paid to Affiliates), attorneys’ fees, recording costs, surveys, and environmental reports, and current year’s ad valorem tax proration in connection with the granting and approval of any partial release.

(s) **Note:** The promissory note of even date herewith, executed by Trustor, payable to the order of Beneficiary, in the amount of SEVEN MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$7,650,000.00), or so much thereof as may be advanced, due as provided therein, secured by, among other things, this Deed of Trust, and all renewals, modifications and extensions thereof.

(t) **Obligations:** Any and all of the covenants, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Trustor to Beneficiary, Trustee or others as set forth in the Security Documents.

(u) **Oil and Gas Rights:** All existing and future minerals, oil, gas, and other hydrocarbon substances in, upon, or through the Land.

(v) **Partial Release Price.** Shall have the meaning ascribed in *Section 13.21(b)*.

(w) **Permitted Encumbrances:** The liens, easements, restrictions, reservations, security interests and other matters (if any) reflected on *Exhibit B* attached hereto, but only to the extent such matters from time to time are valid, subsisting and continue to affect the Trust Estate, including, without limitation, the “Permitted Liens” (as defined in the Loan Agreement).

(x) **Person:** Any person, corporation, limited liability company, partnership or other entity (including Governmental Authority).

(y) **Personalty:** All of the right, title and interest of Trustor in and to all “equipment” (as such term is defined in Chapter 9 of the Utah Uniform Commercial Code), and all other “goods” (other than Fixtures) of any kind or character (as such term is defined in Chapter 9 of the Utah Uniform Commercial Code), now or hereafter located upon, within or about the Land and the Buildings, together with all accessions thereto, replacements and/or substitutions thereof and the proceeds thereof, and all “documents,” “commercial tort claims,” “instruments,” “letter-of-credit rights,” “accounts,” “chattel paper,” and “general intangibles” (as such terms are defined in Chapter 9 of the Utah Uniform Commercial Code) relating, directly or

indirectly, in whole or in part, to the ownership, construction, operation or development of the Land or any part thereof and/or any real estate subdivision comprising the same or any part thereof, including, without limitation, all claims for any tax refunds, or other payments and all monetary deposits given to any public or private utility with respect to utility services furnished to the Trust Estate, and the proceeds of all of the foregoing.

(z) **Release Processing Fee:** Shall have the same meaning as is ascribed to such phrase in the Loan Agreement.

(aa) **Rents:** All of the rents, revenues, income, proceeds, profits, issues and other benefits paid or payable by parties to the Leases other than Trustor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Trust Estate.

(bb) **Security Documents:** The Note, the Loan Agreement, this Deed of Trust, that certain Financing Statement of even date herewith, the Assignment of Construction Contracts of even date herewith, the Assignment of Licenses, Contracts and Permits of even date herewith, and all other documents and instruments, as the same may be amended, modified, renewed, or extended, from time to time, to evidence or secure the payment of the Indebtedness or the performance and discharge of the Obligations.

(cc) **Trustor:** The above defined Trustor, whether one or more, and Trustor's successors, assigns, legal representatives, heirs, executors and administrators and all subsequent owners of the Trust Estate, subject however to the provisions of *Sections 5.4* and *5.5* hereof.

(dd) **Utilities:** All (1) sanitary sewer discharge capacity related to the Land, (2) water capacity available or allocable to the Land or dedicated to or reserved for the Land, and (3) storm sewer capacity of the facilities located or to be located on the Land.

(ee) **Utility Reimbursables:** All right, title and interest of Trustor in and to (1) all reimbursements or proceeds in connection with the sale of bonds by or on behalf of any applicable government agency or quasi-governmental agency related to the Utilities; (2) all costs and expenses reimbursed by any applicable government agency or quasi-governmental agency to Trustor in connection with installation of sewer and water lines and other infrastructure and improvements to the Land; (3) all credits, refunds, reimbursements or rebates for any reservation fee, stand-by fee, capital recovery charge or other sums accruing and to accrue in favor of Trustor or any of Trustor's Affiliates arising from or in connection with any Utilities or Additional Utility Capacity, including any such agreements with the County of Utah and/or the City of Highland and accounts receivable of Trustor (including, without limitation, those owing by the County of Utah and/or the City of Highland to Trustor), and (4) all other utility reimbursables (including, without limitation, gas reimbursable) arising from or by virtue of any transactions related to the Land (including, without limitation, any (i) water wells and/or lift stations, (ii) offsite drainage and water detention ponds incident or necessary to serve the Land, (iii) utility lines, (iv) streets and roads, (v) grading, excavation, and clearing of the Land, and (vi) all other improvements to the infrastructure of the Land necessary to cause the Land to be platted and put into a buildable condition for the commencement of construction of residences), the Improvements (as such term is defined in the Loan Agreement), or the Personalty.

**ARTICLE 2
GRANT**

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Trustor GRANTS, BARGAINS, SELLS and CONVEYS to Trustee the Trust Estate, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Trust Estate to Trustee, in trust, for the benefit of Beneficiary, with power of sale and the right of entry and possession, Trustor hereby binds itself, its heirs, successors and assigns, to warrant and forever defend the title to the Trust Estate unto Trustee against every Person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances; provided, however, that if Trustor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall perform and discharge (or cause to be performed and discharged) the Obligations on or before the dates the same are to be performed and discharged and all commitments of Beneficiary to make advances to Trustor under the Note, the Loan Agreement, and/or any other Security Document have terminated, then, if requested in writing by Trustor, Beneficiary shall prepare, execute, and deliver to Trustor, at Trustor's expense, a release of all the liens, security interests, estates and rights granted by the Security Documents and, upon the execution of the same by Beneficiary, such liens, security interests, estates, and rights shall terminate; otherwise the same shall remain in full force and effect.

This conveyance is further made in trust to secure payment of all other amounts, with interest thereon, becoming due and payable to Beneficiary under the terms of the Note, this Deed of Trust, or any other Security Document, including but not limited to, any extension, renewal, modification or re-amortization of said Indebtedness; any increase or addition to the Indebtedness; all loans and future advances made by Beneficiary to Trustor; and all other debts, obligations and liabilities of every kind and character of Trustor now or hereafter existing in favor of Beneficiary, whether such debts, obligations or liabilities be direct or indirect, primary or secondary, joint or several, fixed or contingent, directly or indirectly related to the Trust Estate and the performance and discharge of any and all Obligations contained in the Note, the Loan Agreement, this Deed of Trust, or any other Security Document, including, without limitation, Advances made by Beneficiary, it being contemplated by Trustor that future advances (including, without limitation, Advances) may be made by Beneficiary.

**ARTICLE 3
WARRANTIES AND REPRESENTATIONS**

Trustor hereby unconditionally warrants and represents to Beneficiary as follows:

3.1 **Validity of Loan Instruments.** The execution, delivery and performance by Trustor of the Security Documents and the borrowing evidenced by the Note

(a) if such party is a corporation, are within its corporate powers, have been duly authorized by its board of directors and shareholders and comply with all other corporate requirements,

(b) if such party is a partnership or a joint venture, are within its partnership or joint venture powers, have been duly authorized by its partners or joint venturers so as to be the binding act of the partnership or joint venture and comply with all other partnership or joint venture requirements,

(c) if such party is a limited liability company, are within its company powers, have been duly authorized by its managers and members and comply with all articles of organization, regulations, and other company requirements,

(d) have received all required governmental approval in order to be legally binding and enforceable, and

(e) to Trustor's knowledge, will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of such party's property or assets except in favor of Beneficiary.

The Security Documents constitute the legal, valid, and binding obligations of Trustor and others obligated under the Security Documents, in accordance with their respective terms, subject to any applicable creditor's rights laws.

3.2 Title to Trust Estate. Trustor has good and indefeasible fee simple title to the Land and Buildings, and good title to the Leases, Rents, Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever, except for the Permitted Encumbrances. This Deed of Trust creates a valid and subsisting, first lien deed of trust on the Land, the Buildings and the Fixtures and a valid, subsisting, first priority security interest in the Personalty, Leases and Rents.

3.3 Compliance with Legal Requirements. To Trustor's actual knowledge, the location, construction, occupancy and use of the Trust Estate does not and in the future, will not violate any Legal Requirements. Without limiting the generality of the foregoing, to Trustor's actual knowledge, the Trust Estate and Trustor are not in violation of or subject to any existing, pending or threatened investigation or inquiry of any Governmental Authority pertaining to health or the environment, including, without limitation, any violation of CERCLA (as such term is defined in Article 11), RCRA (as such term is defined in Article 11), Title 73 of the Utah Code and the Federal Solid Waste Disposal Act of 1965, as amended, or any amendments thereto or similar statutes hereinafter enacted in addition, replacement, or substitution thereof (in whole or in part). The term "hazardous substance" shall have the meaning specified in CERCLA, and the terms "solid waste" and "dispose" shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA, TSCA (as such term is defined in Article 11), or any amendments thereto or similar statutes hereinafter enacted in addition, replacement, or substitution thereof (in whole or in part) so as to broaden the meaning of any term defined therein, then such broader meaning shall apply subsequent to the effective date of such amendment.

3.4 Use of Trust Estate. The Trust Estate is "residential real property" as that term is defined in the Depository Institutions Deregulation and Monetary Control act of 1980, as amended (12 U.S.C. § 1735f-7, *et seq.*) and the regulations promulgated thereunder, as amended (contained in 12 C.F.R. § 590.1, *et seq.*) (collectively hereinafter referred to as "**DIDMCA**").

ARTICLE 4 AFFIRMATIVE COVENANTS

Trustor hereby unconditionally covenants and agrees with Beneficiary as follows:

4.1 Payment and Performance. Trustor shall pay or cause to be paid the Indebtedness, as and when called for in the Note and Security Documents and on the due dates thereof, and will perform all of the Obligations, in full on the dates the same are to be performed. Trustor acknowledges that time is of the essence with respect to Trustor's payment of the Indebtedness and performance of the Obligations pursuant to this Deed of Trust.

4.2 **Compliance with Legal Requirements.** Trustor shall promptly and faithfully comply with and obey all Legal Requirements.

4.3 **Payment of Impositions.** Trustor shall duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the due date thereof. In the event a law, ordinance or regulation is passed after the date of this Deed of Trust deducting from the value of the Trust Estate for the purpose of taxation of any lien thereon, or changing in any way the laws in force for the taxation of mortgages, deeds of trust or indebtedness thereby secured, or the manner or the operation of any such taxes so as to affect adversely the interest of Beneficiary, then Trustor shall pay the full amount of such taxes, unless and to the extent the payment by Trustor either would be unlawful or would constitute usury or render the Indebtedness wholly or partially in violation of Applicable Law (as defined in the Note). Trustor may contest the validity of any such Impositions and pending the determination of such contest, postpone payment of such Impositions; provided that (1) Trustor shall have first given Beneficiary such security as it may request, in its good faith judgment, to ensure such payment (in the event of a determination of such contest adversely to Trustor) and to secure and indemnify Beneficiary against any cost, expense, loss or damage in connection with such contest or such postponement of payment, and (2) Trustor shall not so postpone payment if Beneficiary would thereby be subject to potential fine or penalty or prosecution for a crime or the Trust Estate or any part thereof might thereby be condemned, foreclosed upon, sold, forfeited, or vacated or the value of the Trust Estate might thereby, in the good faith judgment of Beneficiary, be materially impaired.

4.4 **Repair.** Except for utility and related improvements contemplated by the loan evidenced by the Note, Trustor shall keep the Trust Estate in its present condition and appearance and will make all repairs, replacements, additions, improvements and alterations, interior and exterior, structural and non-structural, which are necessary or reasonably appropriate to keep the same in such condition (reasonable wear and tear excepted), and, without limiting the foregoing, shall prevent waste to the Trust Estate. Trustor shall guard every part of the Trust Estate from removal, destruction and damage, and shall not do or suffer to be done any act whereby the value of any part of the Trust Estate may be lessened.

4.5 **Insurance.** Within forty-five (45) days after the date hereof, Trustor shall obtain and thereafter maintain, with insurers of recognized responsibility as are reasonably acceptable to Beneficiary, insurance covering the Trust Estate, as follows:

(a) Damage or loss by fire and such other hazards (including lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, vandalism, malicious mischief, aircraft, boilers, sprinklers, vehicle and smoke) as are covered by the broadest form of extended coverage endorsement as is available from time to time, notwithstanding any nonconforming use of the Trust Estate in the amount of full replacement value of the Improvements (as such term is defined in the Loan Agreement), with a loss payable endorsement in favor of Beneficiary and without any deduction being made for depreciation. Notwithstanding the foregoing, Trustor shall not be required to carry the insurance set forth in this subparagraph (a) unless and until requested by Beneficiary.

(b) If any portion of the Trust Estate is situated in an area or subsequently designated as having flood hazards, (1) as defined by the Flood Disaster Protection Act of 1973, as amended from time to time, or any similar legislation, or (2) as identified by the Federal Emergency Management Agency, Beneficiary may require flood insurance in an amount equal to the replacement cost of the Buildings or the maximum amount of flood insurance available, whichever is the lesser.

(c) Commercial general liability insurance against claims for bodily injury or death or property damage occurring in, upon, or about or resulting from the Trust Estate, or any street, drive, sidewalk or curb adjacent thereto, naming Beneficiary as an additional insured (rather than a “loss payee” as contemplated in the first sentence of this section) pursuant to a CG Form 2026 1185 endorsement with no qualifications. In no event will the commercial general liability policy be written for an amount less than \$2,000,000.00 combined single limit for bodily injury and property damage liability.

(d) Such other insurance with respect to the Trust Estate and in such amounts as Beneficiary from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against in respect of property similar to the Trust Estate.

In the event of a foreclosure pursuant to this Deed of Trust or any other transfer of the Trust Estate in lieu of foreclosure or in extinguishment, in whole or in part, of the Indebtedness, all right, title and interest of Trustor in and to such insurance policies and all rights to any unearned premiums and sums held in escrow to pay such premiums, shall vest in the purchaser at such foreclosure or transferee, as the case may be. No such insurance policy shall be canceled or materially altered unless such insurer shall have first given Beneficiary thirty (30) days prior written notice. Beneficiary may, but shall not be obligated to, make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by the insurer to prevent the same. Beneficiary shall be furnished with a certificate of insurance evidencing the required insurance coverage within forty-five (45) days after the execution of this Deed of Trust, and a certificate of insurance evidencing the timely renewal of each initial insurance policy or renewal policy, together with receipts or other evidence that the premiums thereon have been paid. If requested by Beneficiary, Beneficiary also shall be furnished with a copy of the original of each initial insurance policy and a copy of the original of each renewal policy not later than fifteen (15) days following written request therefor.

All insurance policies are to be issued by companies acceptable to Beneficiary, having a Best’s Insurance Guide Rating of A-, Class VII or higher.

4.6 Escrow. After an Event of Default that is not cured within any curative period, by written notice to Trustor, Beneficiary may require Trustor to pay to Beneficiary on the date installments are payable under the Note, escrowed sums equal to one-twelfth (1/12th) of the sum estimated by Beneficiary for payment of the annual sum for funding all taxes assessed against the Trust Estate (estimated whenever necessary), and premiums for all insurance. If Beneficiary determines that any amounts previously paid by Trustor are insufficient for the payment in full of such taxes or insurance, Beneficiary shall notify Trustor of the increased amounts required to provide a sufficient fund, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary’s notice. The escrowed sums may be held by Beneficiary in non-interest-bearing accounts and may be commingled with Beneficiary’s other funds. Upon assignment of this Deed of Trust, Beneficiary shall have the right to pay the balance of the escrowed sums then in its possession to its assignee whereupon Beneficiary and Trustee shall be completely released from all liability with respect thereto. Upon full payment of the Indebtedness, or at such earlier time as Beneficiary may elect, the balance of the escrowed sums in its possession shall be paid to Trustor and no other party shall have any right or claim thereto. If no Event of Default shall have occurred and be continuing hereunder, the escrowed sums shall be repaid to Trustor in sufficient time to allow Trustor to satisfy Trustor’s obligations under the Security Documents to pay the taxes or, at the option of Beneficiary, shall be paid directly to the Governmental Authority entitled thereto. If an Event of Default shall have occurred and be continuing hereunder, however, Beneficiary may credit the full amount of the escrowed sums or any part thereof against the Indebtedness. Notwithstanding anything to the contrary contained in this **Section 4.6**

or elsewhere in this Deed of Trust, Beneficiary may waive the right to receive the payment by Trustor of the escrowed sums, but waiver of such payment is without prejudice to Beneficiary's right to insist at any subsequent time or times that such payments be made in accordance with the provisions of this **Section 4.6**.

4.7 Restoration Following Casualty. (a) If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Trust Estate, Trustor shall promptly give notice thereof to Beneficiary. In such event, Trustor shall commence the rebuilding, restoration or repair and complete same, all in accordance with the plans and specifications approved by Beneficiary (such approval not to be unreasonably withheld, conditioned or delayed).

(a) If any act or occurrence of any casualty on which insurance was not obtained or obtainable shall result in damage to, or loss or destruction of the Trust Estate, Trustor also shall give immediate notice thereof by mail to Beneficiary and, unless otherwise so instructed by Beneficiary, shall promptly, at Trustor's sole cost and expense, restore, repair, replace and rebuild the Trust Estate to the condition and character immediately prior to such damage, loss or destruction.

4.8 Intentionally Deleted.

4.9 Performance of Leases. Trustor shall (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements binding upon it under each of the Leases, if any, (b) except in the ordinary course of business, and exercising reasonable care of a prudent operator or manager of properties similarly situated to the Trust Estate in Utah County, Utah, not voluntarily terminate, cancel or waive its rights or the obligations of any other party under any of the Leases, (c) use all efforts to maintain each of the Leases in force and effect during the full term thereof, and (d) appear in and defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or the other party or parties thereto.

4.10 Inspection. Trustor shall permit Trustee and Beneficiary, and their agents, representatives and employees, to inspect the Trust Estate at all reasonable times during reasonable business hours, and Trustor shall reimburse Beneficiary for Beneficiary's reasonable out of pocket costs and expenses with respect to such inspections.

4.11 Hold Harmless. Except for actions or claims resulting from Beneficiary's gross negligence or willful misconduct, Trustor shall defend, at its own expense, and hold Beneficiary harmless from, any and all reasonable costs and expenses, including legal fees, in connection with or incurred by Beneficiary with regard to (a) any action or claim with respect to title to the Trust Estate, (b) the preparation, amendment, interpretation and administration of this Deed of Trust or any of the other Security Documents in any action defending any claim or liability asserted by a third party arising out of or related to the transactions contemplated by this Deed of Trust. If, pursuant to any covenant contained in this Deed of Trust, Beneficiary shall pay out any money chargeable to Trustor, or subject to reimbursement by Trustor under the terms of this Deed of Trust, Trustor shall repay the same to Beneficiary immediately at the place where the Note hereby secured is payable, together with interest thereon, at the default rate of interest set forth in the Note (but in no event at a rate in excess of the maximum rate which may be permitted by law). The sum of each such payment shall be added to the Indebtedness hereby secured and thereafter shall form a part of the same and shall be secured by this Deed of Trust.

4.12 Books and Records and Financial Statements of Trustor. Trustor shall maintain full and accurate books of account and other records reflecting the results of its operations, and will furnish or cause to be furnished to Beneficiary, (a) within forty-five (45) days after the end of each fiscal quarter of Trustor, (1) a status report detailing the sales and development activity for such quarter; and (2) such other financial and accounting information as Beneficiary may reasonably require; (b) on or before ninety (90) days after the close of the fiscal year, (1) a balance sheet and a statement of the income and expenses of Trustor for the preceding calendar year, (2) an operating statement, in such detail as Beneficiary may reasonably require, which accurately, fairly and separately presents Trustor's operations of the Trust Estate for the fiscal year then ended; and (3) annual Financial Statements of Trustor certified to by an officer of Trustor; and (c) such other financial and accounting information as Beneficiary may reasonably require. The balance sheets shall be prepared in accordance with good accounting principles applied consistently as was done in the preparation of the Financial Statements heretofore prepared in connection with the Indebtedness, with such changes or modifications thereto as may be approved in writing by Beneficiary. At any time and from time to time Trustor shall deliver to Beneficiary such other financial data as Beneficiary shall reasonably request with respect to the ownership, maintenance, use and operation of the Trust Estate and amenities serving the Trust Estate, and Beneficiary.

4.13 Payment of Certain Costs. Upon demand by Beneficiary, Trustor shall promptly pay all reasonable costs and expenses previously or hereafter incurred by Beneficiary for legal, architectural, appraisals, accounting, engineering or other professional services rendered by third parties to or for the benefit of Beneficiary in connection with the making of the initial or any subsequent loan to Trustor constituting any portion of the Indebtedness, or in the enforcement of any of Beneficiary's rights or remedies hereunder or all of the foregoing. Trustor shall also promptly pay all bills for labor and materials incurred in connection with the Trust Estate and shall never permit to be filed against the Trust Estate, or any portion thereof, any lien, superior or inferior to the lien hereof, for any such bill that is valid and legally due and payable. Upon request of Beneficiary, Trustor shall furnish satisfactory proof of payment of all such bills prior to delinquency.

4.14 Estoppel Certificate. Trustor acknowledges that the Indebtedness hereby secured and/or the lien hereby created may from time to time be assigned by Beneficiary, and Trustor agrees to execute and cause to be executed estoppel affidavits certifying as to such matters (which are true) with respect to the Indebtedness, this Deed of Trust and the Trust Estate and other similar documentation as may be reasonably necessary or required by Beneficiary in connection with any such assignment. Such documents shall be executed and returned to Beneficiary within ten (10) business days after their delivery to Trustor.

4.15 Further Assurances. Upon the request of Beneficiary, Trustor will execute, acknowledge, deliver and record and/or file such further instruments, certificates and documents and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents and to subject to the liens and security interests of this Deed of Trust any property intended by the terms hereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the then Trust Estate.

4.16 Specific Indemnity. Without limiting the liability of Trustor for the breach of any warranty, representation or covenant herein, Trustor agrees to protect, defend, indemnify and hold Beneficiary harmless from and against and to reimburse Beneficiary with respect to any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, fixed or contingent, without limit and without regard to the cause or causes thereof or the negligence (except as set forth below as to gross negligence or willful misconduct of Beneficiary) of any party or parties, asserted against or incurred by Beneficiary at any time arising out of the breach of any warranty, representation or covenant of Trustor

set forth herein, and irrespective of whether the Indebtedness has been paid or this Deed of Trust has been released, irrespective of whether Beneficiary has committed negligence, it being specifically intended by Trustor and Beneficiary that all indemnity obligations and liabilities assumed by Trustor hereunder be without limit and without regard to the cause or causes thereof (including preexisting conditions), strict liability, or the negligence of any party or parties (including Beneficiary, except as set forth below with respect to gross negligence or willful misconduct of Beneficiary), whether such negligence be gross, sole, joint or concurrent, active or passive. **The parties specifically intend that, pursuant to this Section 4.16, Beneficiary is to be indemnified against Beneficiary's own negligence; however, Beneficiary is not and shall not be indemnified from its own gross negligence or willful misconduct. The foregoing indemnity applies, without limitation, to any Legal Requirement pertaining to health or the environment, regardless of whether the act, omission, event or circumstance constituted a violation of such Legal Requirement at the time of its existence or occurrence, including, without limitation, any violation of CERCLA or RCRA or TSCA and is cumulative of the indemnity contained in Section 12.5 hereof.**

ARTICLE 5 NEGATIVE COVENANTS

Trustor hereby covenants and agrees with Beneficiary that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 **Use Violations.** Trustor shall not use, maintain, operate or occupy, or knowingly allow the use, maintenance, operation or occupancy of the Trust Estate or any portion thereof in any manner that (a) violates any Legal Requirement, (b) may be dangerous unless safeguarded as required by law, (c) constitutes a public or private nuisance, or (d) makes void, voidable or cancelable, or increases the premium of any insurance then in force (except for increases in insurance due to the addition of tenants to the Trust Estate).

5.2 **Alterations.** Trustor will not commit or permit any waste of the Trust Estate and shall not, (subject to the provisions of *Section 4.4*) without the prior written consent of Beneficiary, make or permit to be made any alterations or additions (except in the ordinary course of business) to the Trust Estate (except for the construction of "Improvements" in accordance with the "Plans" [as such quoted terms are defined in the Loan Agreement] or in the ordinary course of business) to the Trust Estate.

5.3 **Replacement of Fixtures and Personalty.** Trustor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Buildings unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is immediately replaced by an article of equal suitability and value, owned by Trustor, free and clear of any lien or security interest except such as may be first approved in writing by Beneficiary.

5.4 **No Further Encumbrances.** Except as provided in *Section 4.2(a)* of the Loan Agreement, to the extent permitted by law, Trustor will not, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether the same are expressly subordinate to the liens of the Security Documents, related to the Trust Estate, the Leases or the Rents, other than the Permitted Encumbrances. Trustor shall not initiate, join in, or consent to any change in restrictive covenants, zoning ordinances or other private or public restrictions limiting or defining the uses that may be made of the Trust Estate or any part thereof or any easements or other agreements benefitting the Trust Estate without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld or delayed. Beneficiary agrees to approve the contemplated

restrictions for the Trust Estate as more particularly described in the Loan Agreement. Furthermore, Trustor shall not grant any easement, right-of-way, drill site designation, or mineral lease related to the Trust Estate or conduct any mineral development related to the Trust Estate without the prior written consent of Beneficiary.

5.5 No Sales, Leases or Other Transfers. Except for (i) sales of the Trust Estate in the ordinary course of business (including sales to builders) in accordance with the provisions of *Section 13.21* of this Deed of Trust, (ii) conveyance of rights-of-way (including streets and roads) to a governmental entity or dedication of such rights-of-way to the public pursuant to a final recorded subdivision plat approved by Lender, (iii) conveyance of common areas to a property owners' association created for the benefit of the owners of the Lots, and (iv) conveyance of any planned utility facilities to the District or other governmental entity, Trustor expressly agrees that in the event that Trustor, without the prior written consent of Beneficiary sells, exchanges, assigns or otherwise disposes of all or any portion of the Trust Estate or rents or leases any of the Trust Estate for any period in excess of one (1) year, Beneficiary, to the extent permitted by law, shall have the right and option, subject to any applicable cure period for default under this Deed of Trust, to declare the entire amount of the Indebtedness immediately due and payable. Any sale, transfer, pledge, or other disposition of fifty percent (50%) or more of the stock, securities, membership interests, or other interest in Trustor (or any general partner or joint venturer in Trustor, if Trustor or such general partners or joint venturers are corporations or limited liability companies) whether accomplished in one transaction or a series of related transactions, or a sale, transfer, pledge or other disposition of fifty percent (50%) or more of the partnership or joint venture interests in Trustor (or any general partner or joint venturer in Trustor, if Trustor or such general partners or joint venturers are persons, partnerships or joint ventures [specifically not including transfers between limited partners]) whether accomplished in one transaction or a series of related transactions, shall be deemed to be within the prohibition contained within this paragraph and shall require the prior written consent of Beneficiary. The right and option granted hereunder, to the extent permitted by law, shall be absolute, irrespective of whether the sale, exchange, assignment or transfer would or might (a) diminish the value of the security for the Indebtedness, (b) result in an Event of Default hereunder, (c) compel the holder hereof to seek any remedies available to it, whether at law or in equity, or (d) add or remove the liability of any Person for payment or performance of the Indebtedness or any covenant or obligation under this Deed of Trust.

In order to exercise such right and option, Beneficiary shall give written notice to Trustor and to the party to whom such property was conveyed by Trustor that the maturity of the Indebtedness has been accelerated and demand full payment thereof. Beneficiary's right and option hereunder may be exercised at any time for a period of one (1) year following the later to occur of (x) the date the Trust Estate or any part thereof is conveyed or (y) the date actual notice thereof is given to Beneficiary. Trustor's failure to pay the Indebtedness within thirty (30) days after the giving of such notice of acceleration to Trustor shall constitute an Event of Default under this Deed of Trust.

If Trustor requests Beneficiary's consent to a proposed transfer, conveyance or further hypothecation of the Trust Estate (other than (i) sales in the ordinary course of business [including sales to builders] or sales of Acreage in accordance with the provisions of *Section 13.21* of this Deed of Trust, (ii) conveyance of rights-of-way (including streets and roads) to a governmental entity or dedication of such rights-of-way to the public pursuant to a final recorded subdivision plat approved by Lender, (iii) conveyance of common areas to a property owners' association created for the benefit of the owners of the Lots, and (iv) conveyance of any planned storm water detention facilities to the Utility Reimbursables or other governmental entity), Beneficiary shall consent upon satisfaction of all of the following: (a) that Trustor pay a transfer fee, in an amount equal to one percent (1%) of the outstanding principal balance of the Note at the time of transfer, so long as such amount, when added to all other amounts deemed interest, does not cause the total amount of interest to exceed the maximum amount permitted by applicable usury

laws; (b) that Trustor and each proposed transferee execute any and all instruments Beneficiary shall reasonably require; (b) Beneficiary shall have approved the terms of the proposed sale, the credit-worthiness and financial capability of the proposed purchaser, and the ability of the proposed purchaser to manage and operate the Trust Estate (failure of Beneficiary to consent to such request within thirty (30) days shall be deemed disapproval thereof by Beneficiary); and (c) Trustor shall pay all reasonable costs and expenses incurred by Beneficiary in connection with such transfer, including, without limitation, reasonable attorney's fees.

5.6 **Residential Real Property.** Trustor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Trust Estate or any portion thereof, in any manner that would cause the Trust Estate to fall outside the definition of "residential real property" as that term is set forth in DIDMCA.

ARTICLE 6 EVENTS OF DEFAULT

The term "Event of Default," as used in this Deed of Trust, shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

6.1 **Payment of Indebtedness.** If Trustor or any party liable therefor shall fail, refuse or neglect to pay, in full, any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Note, the other Security Documents, or at a date fixed for prepayment or by acceleration or otherwise, which failure, refusal or neglect continues for five (5) days following written notice of such default from Beneficiary to Trustor; provided, however, that Beneficiary shall not be required to give Trustor more than three (3) such notices of a monetary default within any twelve (12) consecutive month period during the term of the Note.

6.2 **Performance of Obligations.** Other than a failure to pay any sum required to be paid under the Note or the Security Documents (which is not subject to the hereinafter provided notice and cure period), if Trustor shall fail, refuse or neglect to perform and discharge fully and in a timely manner any of the Obligations as and when required, if such failure, refusal or neglect shall either be incurable (it being agreed that the occurrence of the events described in *Sections 6.5, 6.8, 6.9, and 6.10* are incurable, but that all other failures or refusals to perform any of the Obligations or other performance defaults by Trustor under any of the Security Documents are potentially curable) or, if curable, shall remain uncured for a period of thirty (30) days after written notice thereof from Trustee or Beneficiary to Trustor; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be reasonably performed, done or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred if Trustor commences same within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion within ninety (90) days after such notice. Notwithstanding the foregoing, (a) no notice shall be given and an Event of Default shall automatically occur if Trustor shall fail, refuse or neglect to comply with the insurance obligations set forth in *Section 4.5*, and (b) no notice shall be given pursuant to this *Section 6.2* if notice is provided by another provision of this Deed of Trust or afforded by any Legal Requirement.

6.3 Intentionally Deleted.

6.4 **False Representation.** If any statement, representation or warranty made by Trustor in, under or pursuant to the Security Documents, any financial statements or any other writing delivered to Beneficiary in connection with the Indebtedness shall be false, misleading or erroneous in any material respect (as determined in Beneficiary's good-faith business judgment).

6.5 **Voluntary Bankruptcy.** If Trustor shall (a) voluntarily be adjudicated a bankrupt or insolvent, (b) seek, consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property, (c) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction, (d) make a general assignment for the benefit of its creditors, or (e) admit in writing its inability to pay its debts as they mature.

6.6 **Involuntary Bankruptcy.** If (a) a petition is filed against Trustor seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction, or (b) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Trustor, a receiver or trustee for such party, or for all or any part of its property or any of the Trust Estate, and such petition, order, judgment or decree shall not be and remain discharged or stayed within a period of sixty (60) days after its entry.

6.7 **Dissolution of Trustor.** If Trustor shall dissolve or liquidate, have its certificate of limited partnership or articles of organization or incorporation forfeited, or merge or be consolidated into any company, corporation, partnership, or other entity, or shall attempt to do any of the same.

6.8 **Destruction or Condemnation of Improvements.** Subject to the provisions of *Sections 4.7* and *9.1*, if the Trust Estate is so demolished, destroyed or substantially damaged or taken that (in Beneficiary's reasonable discretion) it cannot be restored or rebuilt with available funds to a profitable condition within six (6) months of the date of the casualty.

6.9 **Foreclosure of Other Liens.** If the holder of any lien or security interest on the Trust Estate (without hereby implying Beneficiary's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

6.10 **Process Against the Trust Estate.** The levy of any execution, attachment, sequestration, or other writ against the Trust Estate or any part thereof.

6.11 **Non-Compliance with Legal Requirements.** The failure or refusal or neglect of Trustor to comply, at its own cost and expense, with all Legal Requirements of any Governmental Authority having jurisdiction over the Trust Estate or the operations conducted thereon.

6.12 **Failure to Use as Residential Real Property.** If Trustor shall use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Trust Estate or any portion thereof in any manner which causes the Trust Estate to fall outside the definition of "residential real property" as that term is set forth in DIDMCA.

6.13 **Default under Loan Agreement.** The occurrence of an Event of Default under the Loan Agreement. Notwithstanding any provision of this Deed of Trust to the contrary, in no event shall Trustor be entitled to more than one opportunity to cure, pursuant to *Section 6.2*, above, any failure, refusal or neglect to perform and discharge fully and in a timely manner any of the Obligations as and when required (e.g., the occurrence of certain events or the existence of certain conditions does not constitute an "Event of Default" under the Loan Agreement until expiration of the cure period provided in *Section 6.2*, above; and this *Article 6* shall not be construed as providing any additional cure period under *Section 6.2* once such event or condition has become an "Event of Default" under the Loan Agreement).

6.14 **Default Under Inferior Liens.** The occurrence of a default by Trustor under any inferior liens secured by the Trust Estate which remains uncured following the expiration of the

applicable notice and cure period. Nothing in this *Section 6.14*, however, shall be construed as allowing the creation or existence of any such inferior liens except as otherwise specifically provided in the Loan Agreement.

ARTICLE 7
ASSIGNMENT OF LEASES, RENTS AND INCOME

7.1 **Assignment.** Trustor hereby absolutely assigns to Trustee all right, title and interest of Trustor in and to all leases now existing or hereafter entered into by Trustor and demising the whole or any part of the Property, and does hereby further assign any and all rents, subrents and other amounts received for the use of all or any portion of the Property, including without limitation, any and all rental agreements and arrangements of any kind now owned or hereafter acquired, and all proceeds from such rents, covering the Property or any portion thereof, now or hereafter existing or entered into, together with issues, royalties, income, profits and security deposits of and from the Property. Until the occurrence of an Event of Default, Trustor may, under a temporary revocable license granted hereby, collect and use all such rents, subrents, issues, royalties, income, and profits which become payable prior to default. Upon the occurrence of an Event of Default, Trustor's license to collect and use any of such proceeds shall immediately cease without further action by or on behalf of any party, and Beneficiary shall have the right, with or without taking possession of the Property, and either in person, by agent, or through a court-appointed receiver (Trustor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such rents, subrents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorneys' fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall obtain both before and after the exercise of the power of sale provisions of this Deed of Trust, the foreclosure of this Deed of Trust and throughout any period of redemption. The rights granted under this *Section 7.1* shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Property is in danger of being lost, removed, or materially injured, or whether the Property or any other security is adequate to discharge the obligations secured by this Deed of Trust. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Beneficiary thereafter to collect the same. Neither any provision contained herein, nor Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease, sublease, option, or other interest in the Property, or an assumption of liability under, or a subordination of the lien or charge of this Deed of Trust to, any tenancy, lease, sublease, option, or other interest in the Property. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Trustor in connection with the Property or any portion thereof are hereby authorized and directed to pay the rents, subrents, issues, royalties, income, and profits payable by them with respect to the Property, or any part thereof, directly to Beneficiary on the demand of Beneficiary. Beneficiary's receipt of such rents, subrents, issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the tenant, lessee, sublessee, or other person concerned to make the payment connected with the amount received by Beneficiary.

7.2 **Application of Payments.** If at any time during the term of this Deed of Trust Beneficiary receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured by this Deed of Trust and under all other instruments further evidencing or securing the Obligations, then Beneficiary shall, except as provided otherwise in the Note and notwithstanding any instructions which may be given by Trustor, have the right to apply such payment, installment, or sum, or any part thereof, to such of the items or obligations then due from Trustor or to Beneficiary as Beneficiary may in Beneficiary's sole discretion determine.

7.3 **No Waiver of Rights by Collection of Proceeds.** The entering upon and taking possession of the Property or any portion of the Property or the collection of rents, subrents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Property, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, any scheduled installments provided for in any of the Obligations secured by this Deed of Trust.

7.4 **Indemnification.** Trustor shall indemnify, pay, protect, defend and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs, and fees (including reasonable attorneys' fees) arising from or related to receipt by Beneficiary of the rents, subrents, issues, royalties, income and profit from the Property or any portion of the Property, except those liabilities arising from Beneficiary's own gross negligence and willful misconduct.

ARTICLE 8 DEFAULT AND FORECLOSURE

8.1 **Acceleration; Notice.** Time is of the essence hereof. Upon the occurrence of any Event of Default under this Deed of Trust and following the expiration of any cure period provided for herein, at Beneficiary's option and in addition to any other remedy Beneficiary may have under the Note, Beneficiary may declare all sums secured hereby immediately due and payable and elect to have the Trust Estate sold in the manner provided herein. In the event Beneficiary elects to sell the Trust Estate, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Trust Estate to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Trust Estate is located. Beneficiary shall also deposit with Trustee the Note and all documents evidencing expenditures secured by this Deed of Trust.

8.2 **Exercise of Power of Sale.** Pursuant to applicable law, after the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale.

8.3 **Surrender of Possession.** Trustor shall surrender possession of the Trust Estate to the purchaser immediately after the sale of the Trust Estate as provided in *Section 7.3* of this Deed of Trust, in the event such possession has not previously been surrendered by Trustor.

8.4 **UCC Remedies.** Notwithstanding anything to the contrary in *Section 7.3* and *Section 7.4* of this Deed of Trust, Beneficiary, with regard to all Personalty, including fixtures, chattels, equipment, inventory, and personal property, conveyed to Trustee and/or in which a security interest is granted under *Article 2* of this Deed of Trust, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Utah Uniform Commercial Code, and any and all rights and remedies available to Beneficiary under any other applicable law. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble such fixtures, chattels, equipment, inventory, and personal property and make them available to Beneficiary at a reasonably convenient place designated by Beneficiary. Beneficiary shall have the right to enter upon any premises where the Personalty or records pertaining to the Personalty may be and take possession of the Personalty

and records relating to the Personalty. Beneficiary may sell, lease or otherwise dispose of any or all of the Personalty and, after deducting the reasonable costs and out-of-pocket expenses incurred by Beneficiary, including, without limitation, (a) reasonable attorneys' fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the Personalty, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the Personalty, and (g) costs for preservation and protection of the Personalty, apply the remainder to pay, or to hold as a reserve against, the Obligations.

8.5 Foreclosure as a Mortgage. If an Event of Default occurs hereunder, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees and costs in such amounts as shall be fixed by the court.

8.6 Receiver. If an Event of Default occurs and remains uncured, Beneficiary, as a matter of right and without regard to the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate and Trustor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

8.7 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, operation or other use of, the Property shall be applied by Beneficiary (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following order of priority:

(a) first, to the payment of the reasonable costs and expenses of enforcing Beneficiary's rights with respect to the Property and of taking possession of, holding, using, operating, leasing, repairing, improving and selling the same, including, without limitation, (1) trustees' and receivers' fees, (2) court costs, (3) attorneys' and accountants' fees, (4) costs of advertisement, (5) environmental hazard reports and appraisal fees, (6) title report premiums and/or nothing further certificates, and (7) the payment of any and all Impositions, liens, security interests or other rights, title or interests equal or superior to the lien and security interest of this Deed of Trust (except those to which the Property has been sold subject to and without in any way implying Beneficiary's prior consent to the creation thereof);

(b) second, to the payment of all amounts, other than the unpaid principal balance and accrued but unpaid interest thereon, which may be due to Beneficiary under the Security Documents, together with interest thereon as provided therein;

(c) third, to the payment of all accrued but unpaid interest due on the Note;

(d) fourth, to the payment of the principal balance owed on the Note;

(e) fifth, to any other advances made by Beneficiary (only to the extent the same are not represented by the Note);

(f) sixth, to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by Beneficiary, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Property; and

(g) seventh, to Trustor.

8.8 **No Remedy Exclusive.** No remedy conferred upon or reserved to Beneficiary under this Deed of Trust shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Deed of Trust or any other Loan Document, or now or hereafter existing at law or in equity or by statute.

8.9 **Rights upon Default.** In making the Loan, Beneficiary has relied upon the rights available to Beneficiary under this Deed of Trust upon the occurrence of an Event of Default, including, but not limited to, the rights to accelerate the payment of any and all amounts secured by this Deed of Trust, to sell the Property encumbered by this Deed of Trust pursuant to the power of sale granted hereunder, the right to foreclose this Deed of Trust as a mortgage, and the right to have a receiver appointed.

8.10 **Separate Sales.** The Trust Estate may be sold in one or more parcels and in such manner and order as Trustee, in his sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales but other and successive sales may be made until all of the Trust Estate has been sold or until the Indebtedness has been fully satisfied.

ARTICLE 9 CONDEMNATION

9.1 **General.** Promptly upon its obtaining knowledge of the institution of any proceeding, or threatened proceeding, for a condemnation affecting the Trust Estate, Trustor shall notify Beneficiary of such fact. Trustor shall upon the institution of any such proceeding, if requested by Beneficiary, file or defend its claim thereunder and pursue the defense with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Beneficiary for disposition pursuant to the terms of this Deed of Trust. Trustor may be the nominal party in such proceeding but Beneficiary shall be entitled to participate in and to be represented therein by counsel of its own choice, and Trustor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. Beneficiary shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any condemnation proceeds, judgments, decrees or awards. If the Trust Estate is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Trustor by virtue of its interest in the Trust Estate shall be, and is hereby, assigned, transferred and set over unto Beneficiary to be held by it, subject to the lien and security interest of this Deed of Trust, and disbursed as follows:

(a) if (1) all of the Trust Estate is taken, (2) so much of the Trust Estate is taken, or the Trust Estate is so diminished in value, that the remainder thereof cannot (in Beneficiary's reasonable discretion) continue to adequately secure payment of the Note, (3) an Event of Default shall have occurred, or (4) the Trust Estate is partially taken or diminished in value and (in Beneficiary's reasonable discretion) need not be rebuilt, restored or repaired in any manner in order to comply with Legal Requirements (as opposed to rebuilt, restored, or repaired to the condition existing prior to the taking), then in any such event the entirety of the sums so paid to Beneficiary shall be applied by it in the order recited in *Section 9.2*; or

(b) if (1) only twenty percent (20%) or less of the Trust Estate is taken and the portion remaining can (in the exercise of Beneficiary's good faith business judgment), with rebuilding, restoration or repair adequately secure payment of the Note as referred to in clauses (3) and (4) of *Section 8.1(a)*; (2) and none of the other facts recited in *Section 9.1(a)* exists; (3) Trustor has delivered to Beneficiary evidence satisfactory in the exercise of Beneficiary's good faith business judgment indicating that the Trust Estate has access to public streets and roads and

to all water, sanitary sewer and storm drainage facilities necessary for the intended use of the Mortgaged Premises immediately after such taking or diminution; (4) fee simple title to the Trust Estate is held by Trustor (except for portions of the Trust Estate that have been conveyed in accordance with *Section 13.21*); (5) Trustor shall have delivered to Beneficiary the plans and specifications for such rebuilding, restoration or repair acceptable to Beneficiary and comply with such other terms and conditions relating thereto which Beneficiary may then require in its sole discretion; (6) the restoration of the improvements, if any, on the Trust Estate can be completed at a cost which does not exceed the net amount of the available condemnation proceeds; and (7) Trustor shall thereafter commence the rebuilding, restoration or repair and complete same, all in accordance with the plans and specifications approved by Beneficiary and within six (6) months after the date of such taking or diminution in value or such earlier time as may be required by any of the Leases, then such sums shall be advanced to Trustor pursuant to the Loan Agreement to pay for the cost of the rebuilding, restoration or repair; otherwise the same shall be applied by Beneficiary in the order recited in *Section 9.2*.

9.2 Application of Proceeds. All proceeds received by Beneficiary with respect to a taking or a diminution in value of the Trust Estate shall be applied in the following order of priority:

(a) first, to reimburse Trustee or Beneficiary for all reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with collection of such proceeds; and

(b) thereafter, if there shall be any balance, to the following order of priority, subject, however, to the provisions of *Section 9.1(b)* requiring (under the circumstances therein specified) that such proceeds be applied to the rebuilding, restoration or repair of the Trust Estate:

(1) first, to the payment of the reasonable costs and expenses of enforcing Beneficiary's rights with respect to the Trust Estate and of taking possession of, holding, using, operating, leasing, repairing, improving and selling the same, including, without limitation, (1) trustees' and receivers' fees, (2) court costs, (3) attorneys' and accountants' fees, (4) costs of advertisement, (5) environmental hazard reports and appraisal fees, (6) title report premiums and/or nothing further certificates, and (7) the payment of any and all Impositions, liens, security interests or other rights, title or interests equal or superior to the lien and security interest of this Deed of Trust (except those to which the Trust Estate has been sold subject to and without in any way implying Beneficiary's prior consent to the creation thereof);

(2) second, to the payment of all amounts, other than the unpaid principal balance and accrued but unpaid interest thereon, which may be due to Beneficiary under the Security Documents, together with interest thereon as provided therein;

(3) third, to the payment of all accrued but unpaid interest due on the Note;

(4) fourth, to the payment of the principal balance owed on the Note;

(5) fifth, to any other advances made by Beneficiary (only to the extent the same are not represented by the Note);

(6) sixth, to the extent funds are available therefor out of the sale proceeds or the Rents and, to the extent known by Beneficiary, to the payment of any indebtedness or obligation secured by a subordinate deed of trust on or security interest in the Trust Estate; and

(7) seventh, to Trustor.

ARTICLE 10 SECURITY AGREEMENT

10.1 **Security Interest.** This Deed of Trust shall be construed as a deed of trust on real property and it shall also constitute and serve as a security agreement on all property and property rights covered by Chapter 9 of the Utah Uniform Commercial Code (Secured Transactions). Accordingly, Trustor hereby Grants, Bargains, Conveys, Assigns, Transfers and Sets Over unto Beneficiary a first and prior security interest on all of Trustor's right, title and interest in and, to the following to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations:

(a) the Trust Estate (other than the Land) and all amounts deposited or otherwise paid by Trustor and held by Beneficiary from time to time including, without limitation, all held amounts and all amounts held for the payment of Impositions and insurance;

(b) the capacity assigned to Trustor in the amount of the per-day average daily dry-weather flow of normal strength waste and the per-day average daily dry-weather flow of capacity for carrying of waste now or hereafter available to the Trust Estate. Trustor hereby agrees to maintain the Utilities and the Additional Utility Capacity to the Trust Estate so long as the Indebtedness is unpaid. Trustor shall not permit the termination, transfer and/or sale of the Utilities or the Additional Utility Capacity without the express prior written consent of Beneficiary;

(c) all Utility Reimbursables;

(d) any subdivision construction agreement, any writings now or hereafter existing by Trustor and/or any Governmental Authority whereby such Governmental Authority agrees to provide matching funds to Trustor and/or Beneficiary for development of park improvements upon a portion of the Land, and all other development agreements related to the Land; and

(e) all products and proceeds arising by virtue of any transaction related to the disposition of the Utilities, the Additional Utility Capacity, the Utility Reimbursables, the Personalty and Fixtures and the Trust Estate.

10.2 **Financing Statements.** Trustor hereby agrees with Beneficiary to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and further assurances as Beneficiary may, from time to time consider reasonably necessary to attach, perfect, and continue Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. In addition to all rights granted to Beneficiary in this Deed of Trust, Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the collateral (1) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Trust Estate falls within the scope of Article 9 of the Uniform Commercial Code of the State or such jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform

Commercial Code of the State for the sufficiency or filing office acceptance of any financing statements or amendment.

10.3 Uniform Commercial Code Remedies. Beneficiary (or Trustee on Beneficiary's behalf) shall have all the rights and remedies with respect to the Personalty and Fixtures afforded a secured party by Chapter 9 of the Utah Uniform Commercial Code (Secured Transactions) in addition to, and not in limitation of, the other rights and remedies afforded Beneficiary and/or Trustee by the Security Documents. In exercising its rights and remedies under *Article 9* of this Deed of Trust, Beneficiary may proceed separately as to the Personalty and Fixtures (or any of them) or Beneficiary may proceed as to all (or any of them) with respect to the foreclosure provisions contained in *Article 7*.

10.4 Fixture Filing. Portions of the Trust Estate are or will become fixtures relating to the Land, and Trustor expressly covenants and agrees that the filing of this Deed of Trust in the Office of the Utah County Recorder shall also operate from the time of filing therein as a financing statement in accordance with Section 9.502(c) of the Utah Uniform Commercial Code (Secured Transactions). Trustor shall not change Trustor's name or "location" (as determined in accordance with Section 9.307 of the Utah Uniform Commercial Code (Secured Transactions)) without the prior express written consent of Beneficiary. The name of the record owner of the Land covered hereby is the party or parties defined herein as Trustor. Trustor's organizational identity number is 12499259-0160.

10.5 Trustor's Title. Trustor agrees that, except for the Permitted Encumbrances and the security interest granted hereby in the Personalty and Fixtures, Trustor is the owner of the Personalty and Fixtures free of any adverse claim, security interest or encumbrance, and Trustor shall defend the Personalty and Fixtures against all claims and demands of any Person at any time claiming the same or any interest therein. Trustor has not heretofore signed any financing statement and no financing statement signed by Trustor is now on file in any public office except those statements, true and correct copies of which have been delivered to Beneficiary. So long as any amount remains unpaid on the Indebtedness, Trustor shall not execute and there shall not be filed in any public office any such financing statement or statements affecting the Personalty and Fixtures other than financing statements in favor of Beneficiary hereunder.

10.6 No Mortgagee in Possession. The security interest granted herein shall not be construed or deemed to constitute Beneficiary or Trustee as a trustee or mortgagee in possession of the Trust Estate so as to obligate Beneficiary or Trustee to lease the Trust Estate or attempt to do the same, or to take any action, incur any expenses or perform or discharge any obligation, duty or liability with respect to the Trust Estate or any part thereof or otherwise.

ARTICLE 11 CONCERNING TRUSTEE

11.1 No Liability. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's bad faith. Trustee shall not be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted him, upon the Trust Estate for debts contracted or liability or damages incurred in the management or operation of the Trust Estate. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him which he believes in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for his services. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties. The conveyances, assignments and grants of security

interests set forth in this Deed of Trust shall not be deemed or construed to constitute Trustee or Beneficiary as a trustee in possession of the Trust Estate, to obligate Trustee or Beneficiary to lease or attempt to lease any portion of the Trust Estate, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise. Trustor acknowledges that Trustee has no fiduciary or other responsibility to Trustor.

11.2 **Retention of Moneys.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder.

11.3 **Substitute Trustees.** In the event that Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by Beneficiary, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee to act instead of the then acting or named Trustee, the holder or holders of not less than a majority in amount of the Indebtedness shall have the right at any time or times (with or without cause) to remove Trustee then acting, and a substitute Trustee may be named, constituted and appointed by the holder or holders of no less than a majority in amount of the Indebtedness, without formality other than an appointment and designation in writing. The appointment and designation in writing shall be full evidence of the right and authority to make such appointment and designation and of all of the facts therein recited; and this conveyance shall vest in the substitute Trustee, the title, powers and duties conferred on the original Trustee and the conveyance by the substitute Trustee to the purchaser at a foreclosure sale shall be equally valid and effective; and such right to appoint a substitute Trustee shall exist as often and whenever Trustee, original or substitute, has been removed. Trustee or substitute Trustee may appoint or delegate any one or more Persons as agents to perform any act or actions necessary or incident to any sale held by Trustee or substitute Trustee, including the posting of notices and the conduct of the sale.

11.4 **Replaced Trustees.** Without limiting the provisions of *Section 11.3*, upon the written request of Beneficiary, Trustee ceasing to act shall execute and deliver an instrument transferring to the next substitute Trustee, all the estates, properties, rights, powers and trusts of Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in its or his place.

ARTICLE 12 HAZARDOUS MATERIALS

12.1 **Definitions.** For the purposes of this Deed of Trust, Trustor, Beneficiary and Trustee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) **“Hazardous Materials”** shall mean

(1) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*), as amended from time to time, and regulations promulgated thereunder (“**RCRA**”);

(2) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as amended from time to time, and regulations promulgated thereunder (“**CERCLA**”);

(3) asbestos, polychlorinated biphenyls or other substances specifically regulated under the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*), as amended from time to time, and regulations promulgated thereunder (“*TSCA*”);

(4) storage tanks, whether or not underground and whether empty, filled or partially filled with any substance,

(5) the presence of oil, petroleum products and their by-products;

(6) any substance the presence of which on the Trust Estate is prohibited by any Governmental Authority or which is hereafter classified by any Governmental Authority as a hazardous or toxic waste, material, substance, or similar phraseology; and

(7) any other substance which by any Governmental Authority requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal.

(b) “*Hazardous Materials Contamination*” shall mean the contamination (whether formerly existing, presently existing or hereafter occurring) of the Buildings, facilities, soil, groundwater, air or other elements on or of the Trust Estate by Hazardous Materials in violation of applicable Legal Requirements, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials in violation of applicable Legal Requirements at any time (whether before or after the date of this Deed of Trust) emanating from the Trust Estate.

12.2 **Trustor’s Warranties.** Trustor hereby represents and warrants that:

(a) To Trustor’s actual knowledge, no Hazardous Materials in violation of applicable Legal Requirements are now located on the Trust Estate, and neither Trustor nor, to the best of Trustor’s actual knowledge (without any duty of investigation or inquiry, other than the review of the “*Environmental Assessment Report*” (as defined in the Loan Agreement), any other Person has ever caused or permitted any Hazardous Materials in violation of applicable Legal Requirements to be placed, held, located or disposed of on, under, from or at the Trust Estate or any part thereof;

(b) No part of the Trust Estate is being used or, to Trustor’s actual knowledge (without any duty of investigation or inquiry, other than the review of the Environmental Report), has ever been used at any previous time for the disposal, storage (except for Hazardous Materials in quantities and concentrations typically found in properties such as the Trust Estate that do not violate any Legal Requirements), treatment, processing, or other handling of Hazardous Materials in violation of applicable Legal Requirements, nor is any part of the Trust Estate affected by any Hazardous Materials Contamination;

(c) To Trustor’s actual knowledge (without any duty of investigation or inquiry, other than the review of the Environmental Assessment Report), no property adjoining or adjacent to the Trust Estate is being used, or has ever been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Materials in violation of applicable Legal Requirements nor is any other property adjoining the Trust Estate affected by Hazardous Materials Contamination;

(d) No investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination of which Trustor is aware is proposed, threatened, anticipated or in existence with respect to the Trust Estate. To the best of Trustor's actual knowledge (without any duty of investigation or inquiry, other than the review of the Environmental Report), the Trust Estate is not currently on and has never been on, any federal or state "Superfund" or "Superlien" list, and Trustor has no actual knowledge or any facts that, if known to Governmental Authorities, reasonably might be anticipated to cause Governmental Authorities to consider placing the Trust Estate on any such list;

(e) Trustor has not received any written notice from any Governmental Authority with respect to any violation of any Legal Requirements or the existence of any Hazardous Materials Contamination;

(f) The use that Trustor makes and intends to make of the Trust Estate will not result in the disposal or release of any Hazardous Materials in violation of applicable Legal Requirements on, in, from or to the Trust Estate;

(g) Trustor shall not knowingly cause any violation of any Legal Requirements, nor knowingly permit any environmental liens to be placed on any portion of the Trust Estate; and

(h) If and to the extent there are now or hereafter located any underground storage tanks on the Trust Estate, Trustor has registered all underground storage tanks which are now located on the Trust Estate and has paid all fees assessed by the appropriate governmental authorities. Trustor will fully comply with all applicable Federal, State and local statutes and regulations, including the Federal Solid Waste Disposal Act, and 40 C.F.R. Part 280, as supplemented and amended, including without limitation, requirements for financial assurance, tank replacement and monitoring.

12.3 Trustor's Covenants. Trustor shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to cleanup and remove Hazardous Materials in violation of applicable Legal Requirements on, in, from or affecting any portion of the Trust Estate (a) in accordance with all Legal Requirements, and (b) in accordance with the orders and directives of all Governmental Authorities. Trustor agrees to (a) give written notice to Beneficiary promptly upon Trustor's acquiring knowledge of the presence of any Hazardous Materials in violation of applicable Legal Requirements on the Trust Estate or of any Hazardous Materials Contamination with a full description thereof; (b) promptly comply with any Legal Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Beneficiary with satisfactory evidence of such compliance and, upon request of Beneficiary, to provide from time to time during the course of any such work, Site Assessments (as hereinafter defined) verifying such compliance; and (c) provide Beneficiary, within forty-five (45) days after demand by Beneficiary, with a bond, letter of credit or similar financial assurance evidencing to Beneficiary's reasonable satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which Beneficiary reasonably anticipates may be established on the Trust Estate as a result thereof.

12.4 Site Assessments. If (a) Beneficiary (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence and during the continuance of an Event of Default, (1) has a good faith belief that there may exist Hazardous Material Contamination, or (2) is required under regulations governing Beneficiary, or (b) after the occurrence of an Event of Default, Beneficiary determines for any reason, in its sole reasonable discretion, that it would like to contract for

the services of Persons (the “*Site Reviewers*”) to perform environmental site assessments (“*Site Assessments*”) on the Trust Estate for the purpose of determining whether there exists on or near the Trust Estate any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner, occupier or operator of such Trust Estate arising under any state, federal or local law, rule or regulation relating to Hazardous Materials, then such Site Assessments shall be performed at the cost of Trustor and the cost of the same shall be secured by the lien of this Deed of Trust and Security Agreement. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Trustor which do not impede the performance of the Site Assessments. The Site Reviewers are hereby authorized to enter upon the Trust Estate for such purposes. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Trust Estate and such other tests on the Trust Estate as may be appropriate to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. To the extent such information is in Trustor’s possession, Trustor will supply to the Site Reviewers such historical and operational information regarding the Trust Estate as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Beneficiary shall make the results of such Site Assessments fully available to Trustor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The reasonable cost of performing such Site Assessments shall be paid by Trustor upon demand of Beneficiary and any such obligations shall be Indebtedness secured by this Deed of Trust.

12.5 Indemnification. Regardless of whether any Site Assessments are conducted hereunder, and without limiting the liability of Trustor for the breach of any warranty or representation contained in any other Security Document, Trustor shall defend, indemnify and hold harmless Beneficiary and Trustee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, reasonable attorneys’ fees and expenses, and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release or other termination of this Deed of Trust) be paid, incurred or suffered by or asserted against Beneficiary or Trustee by any Person or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Trust Estate of any Hazardous Materials or any Hazardous Materials Contamination or arising out of or resulting from the environmental condition of the Trust Estate or the applicability of any Legal Requirements relating to Hazardous Materials (including, without limitation, CERCLA or any federal, state or local so-called “Superfund” or “Superlien” laws, statute, law, ordinance, code, rule, regulation, order or decree), regardless of whether or not caused by or within the control of Trustor, except that any claims (a) resulting from acts taken by Beneficiary constituting gross negligence or willful misconduct or (b) resulting from acts or omissions accruing after Beneficiary takes possession of the Trust Estate or acquires title thereto are excluded from this indemnity. The representations, covenants, warranties and indemnifications contained in this *Article 11* (a) shall survive the release of this Deed of Trust, the foreclosure or other termination of the lien of this Deed of Trust or conveyance in lieu thereof or the conveyance of the Trust Estate (without, in any manner, implying, Beneficiary’s consent to any such conveyance) and (b) are not limited by any limitation of liability on the part of Trustor (or its managers or any other parties, if applicable) under the Note or any other Security Documents.

12.6 Beneficiary’s Right to Remove Hazardous Materials. Beneficiary shall have the right, but not the obligation, subsequent to an Event of Default, without in any way limiting Beneficiary’s other rights and remedies under this Deed of Trust, to enter onto the Trust Estate or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination which Beneficiary has reasonable

grounds to believe may be on the Trust Estate which, if true, could result in an order, suit, imposition of a lien on the Trust Estate, or other action and/or which, in Beneficiary's sole opinion, could jeopardize Beneficiary's security under this Deed of Trust. All costs and expenses paid or incurred by Beneficiary in the exercise of any such rights shall be Indebtedness secured by this Deed of Trust and shall be payable by Trustor upon demand.

ARTICLE 13 MISCELLANEOUS

13.1 Intentionally omitted.

13.2 Beneficiary's Right to Perform the Obligations. If after an Event of Default Trustor shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then at any time thereafter, and without further notice to or demand upon Trustor and without waiving or releasing any other right, remedy or recourse Beneficiary may have by reason thereof, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the reasonable expense of Trustor, and shall have the right to enter the Land and Buildings for such purpose and to take all such action thereon and with respect to the Trust Estate as it may deem necessary or appropriate. Trustor shall indemnify Beneficiary for all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Beneficiary pursuant to the provisions of this *Section 13.2* or by reason of any other provision in the Security Documents. All sums paid by Beneficiary pursuant to this *Section 13.2* and all other sums expended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the maximum non-usurious rate allowed by law from the date of such payment or expenditure, shall constitute additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Trustor to Beneficiary upon demand.

13.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Security Documents, and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

13.4 Subrogation. If any and all of the proceeds of the Note have been or ever shall be used to extinguish, extend or renew any indebtedness previously existing against any portion of the Trust Estate, then, to the extent of such funds so used, the Indebtedness and the lien of this Deed of Trust shall be subrogated to all of the rights, claims, liens, title and interests previously existing against the Trust Estate to secure the indebtedness so extinguished, extended or renewed and the former rights, remedies, claims, liens, titles and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.

13.5 Successors and Assigns. All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other Persons claiming by, through or under them, however, this provision shall not constitute or be construed as a consent of Beneficiary to the sale of all or any portion of the Trust Estate.

13.6 Severability. The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other

instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

13.7 Usury Laws. It is the intention of the parties hereto to act in strict compliance with Applicable Law. Accordingly, it is agreed that notwithstanding any provision to the contrary in the Note, the Loan Agreement, this Deed of Trust, any of the other Security Documents, or any other instrument securing or evidencing the Indebtedness, or in any other arrangements or agreements, no such provision shall ever be construed to create a contract to pay, as consideration for use, forbearance or detention of money, "interest," as that term may be defined by Applicable Law, at a rate in excess of the maximum lawful rate of nonusurious interest permitted by Applicable Law.

13.8 Entire Agreement and Modification. The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

13.9 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

13.10 Applicable Law. The Security Documents shall be governed by and construed according to the laws of the State of Utah and, to the extent applicable, any federal law.

13.11 Covenants Running with the Land. All Obligations contained in the Security Documents are intended by the parties to be, and shall be construed as, covenants running with the Land.

13.12 Recording and Filing. Trustor will cause the Security Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Trustee or Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

13.13 Notices. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be considered as properly given if mailed first class United States Mail, postage prepaid, registered or certified with return receipt requested, or by delivering the same in person to the intended addressee or by prepaid telegram. Any notice so sent by United States Mail, as aforesaid, shall be deemed received, if not actually received previously, on the third (3rd) day after deposit in the United States Mail. For purposes of notice, the addresses of the parties shall be as set forth herein; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of at least ten (10) days' notice to the other party in the manner set forth above.

13.14 No Waiver. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Trustor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Trustor of any and all of such terms, provisions and conditions.

13.15 Election of Remedies. The exercise of any right, power or remedy given under the terms of this Deed of Trust shall not be considered a waiver of the right to exercise any other right, power or

remedy given herein; and the filing of a suit to foreclose this Deed of Trust, either on any matured portion of the Indebtedness or for the whole Indebtedness, shall never be considered an election of remedies so as to preclude foreclosure under power of sale or to preclude pursuit of any right or remedy under the Security Documents after a dismissal of such a suit; nor shall the filing of the necessary notices for or holding of sale for foreclosure by power of sale or pursuit of any right or remedy under the Security Documents contained herein preclude the prosecution of a later suit or sale to foreclose this Deed of Trust or to sell the Personalty and Fixtures pursuant to the Security Documents.

13.16 Partial Invalidity of Lien. If the lien or security interest secured by this Deed of Trust is invalid or unenforceable as to any part of the Indebtedness secured hereby, or if such lien or security interest is invalid or unenforceable as to any part of the Trust Estate, any unsecured portion of such Indebtedness shall be completely paid prior to the payment of the remaining and secured, or partially secured, portion of said Indebtedness. All payments made on the Indebtedness secured hereby, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of any portion of such Indebtedness which is not secured by the lien or security interest of this Deed of Trust.

13.17 Partial Invalidity of Deed of Trust. The invalidity or unenforceability in any particular circumstance of any provision of this Deed of Trust shall not extend beyond such provision or such circumstance, and no other provision of this instrument shall be affected thereby.

13.18 Payment on Account. Acceptance by Beneficiary of any payment in an amount less than the amount then due on the Indebtedness evidenced by the Note or due hereunder or under any other Security Documents shall be deemed an acceptance on account only, and the failure to pay the entire amount then due under the Note, hereunder, and under any other Security Documents shall be and continue to be a default. Until the entire amount due under all Security Documents has been paid in full, Beneficiary shall be entitled to exercise all rights and remedies conferred upon it in this instrument upon the occurrence of an Event of Default.

13.19 Errors and Defects. Trustor shall, on request of Beneficiary, (a) promptly correct any defect, error or omission that may be discovered in the contents of this Deed of Trust or in any other Security Documents or in the execution or acknowledgment of any of them; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of leases and cash collateral) and do such further acts as may be necessary, or proper to carry out more effectively the purposes of this Deed of Trust and such other instruments given to collateralize the indebtedness secured hereby, and (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including without limitation, any financing statement) deemed advisable by Beneficiary to protect the lien or the security interest granted herein against the rights or interests of third Persons, and Trustor will pay all reasonable costs connected with any of the foregoing actions.

13.20 Credit Reports. Trustor hereby authorizes Beneficiary to obtain, from time to time, credit reports, through reputable credit reporting agencies, relating to Trustor.

13.21 Partial Releases. Upon compliance with the payment requirements of the Note, Trustor shall have the right to obtain partial releases of all liens securing the payment of the Note on the following basis:

- (a) No partial release shall be given if there exists an Event of Default at the time of the request for such partial release. No partial release shall be given if there exists, at the time such release is to be granted, a default in the payment of any sum or the performance of any

obligation securing the Indebtedness, whether such debt is presently existing or hereinafter created;

(b) Trustor shall pay to Beneficiary \$177,924.00 per lot for each Lot to be partially released, plus, in each case, the Release Processing Fee applicable to each partial release of Lots (the payments described in this *Section 13.21(b)* is hereafter referred to as the "**Partial Release Price**"). Notwithstanding the foregoing sentence in this *Section 13.21(b)*, Trustor shall not be required to pay any Partial Release Price for partial releases necessary to (i) the conveyance of rights-of-way (including streets and roads) to a governmental entity or dedication of such rights-of-way to the public pursuant to a final recorded subdivision plat ("**Plat**") approved by Beneficiary, (ii) the conveyance of common areas shown on the Plat to a property owners' association created for the benefit of the owners of the Lots, or (iii) the conveyance of any planned utility facilities to any governmental agency or quasi-governmental agency;

(c) Trustor shall pay all reasonable legal expenses incurred by Beneficiary in connection with the granting and approval of any partial release;

(d) No partial release shall have the effect of depriving any unreleased portion of the Trust Estate from access to a dedicated public road or right-of-way;

(e) Beneficiary shall be furnished evidence satisfactory to it that the available sewer treatment capacity allocated or reserved for the portions of the Land that will continue to secure the Indebtedness is adequate in amount to serve such property assuming no material change in Trustor's land use or development plan for such portion of the Land;

(f) Any material change in the location, configuration, or size of any Lot contained in the final recorded subdivision plat of the applicable subdivision must be approved by Beneficiary in its reasonable discretion;

(g) In the event that Trustor requests a partial release of any portion of the Acreage which has not been improved into Lots, the calculation of the partial release price and the location, configuration and size of such portion of the Acreage shall be approved in writing by Beneficiary in the exercise of Beneficiary's sole good faith discretion and Beneficiary shall be furnished evidence satisfactory to Beneficiary that the available sewer treatment capacity allocated or reserved for the portions of the Acreage which will continue to secure the Indebtedness is adequate in amount to serve such property assuming no material change in Trustor's land use or development plan for such portion of the Land; and

(h) If requested by Beneficiary, simultaneous with each partial release, Trustor will provide Beneficiary with a P-9(b)(3) endorsement to the mortgagee policy of title insurance insuring this Deed of Trust.

13.22 Land Development Loan. Trustor hereby represents and warrants that the Trust Estate is presently unimproved. Accordingly, all references to Buildings, Improvements, improvements, Fixtures, Rents, Leases, insurance and similar terminology indicating that the Trust Estate is improved shall become applicable only upon development of all or any part of the Trust Estate. It is contemplated that Trustor will construct "*Improvements*" (as defined in the Loan Agreement) upon the Trust Estate; provided, however, that Trustor shall not construct any other improvements upon the Trust Estate without Beneficiary's prior written approval (such approval not to be unreasonably withheld, conditioned or delayed).

13.23 Additional Platting. Trustor's right to plat portions of the Trust Estate shall be conditioned upon Beneficiary's approval (which shall not be withheld or delayed except in the exercise of Beneficiary's good-faith business judgment).

13.24 Resolution of Drafting Ambiguities. Trustor acknowledges that it was represented by counsel in connection with this Deed of Trust and that it or its counsel reviewed and revised this Deed of Trust and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party or Beneficiary shall not be employed in the interpretation of this Deed of Trust.

13.25 Intentionally Deleted.

13.26 Recordation. This Deed of Trust shall be duly recorded in such manner and in such places as may be required by any present or future law in order to provide notice of and to protect fully the lien of this Deed of Trust, as modified, amended and restated by this Deed of Trust, and the interests of Trustee and Beneficiary in, the Trust Estate. Trustor will pay all filing, registration and recording fees, and all expenses incidental to the preparation, execution and acknowledgment of this Deed of Trust.

13.27 Arbitration. To the maximum extent not prohibited by law, any controversy, dispute or claim arising out of, in connection with, or relating to the Note or any of the other Security Documents or any transaction provided for therein, including, but not limited to, any claim based on or arising from an alleged tort or an alleged breach of any agreement contained in any of the Security Documents, shall, at the request of any party to the Security Documents (either before or after the commencement of judicial proceedings), be settled by arbitration pursuant to Title 9 of the United States Code, which the parties hereto acknowledge and agree applies to the transaction involved herein, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). In any such arbitration proceeding: (i) all statutes of limitation which would otherwise be applicable shall apply; and (ii) the proceeding shall be conducted in Houston, Texas, by a single arbitrator, if the amount in controversy is \$1,000,000.00 or less, or by a panel of three arbitrators if the amount in controversy is over \$1,000,000.00. All arbitrators shall be selected by the process of appointment from a panel pursuant to Section 13 of the AAA Commercial Arbitration Rules and each arbitrator will have AAA-acknowledged expertise in the appropriate subject matter. Any award rendered in any such arbitration proceeding shall be final and binding, and judgment upon any such award may be entered in any court having jurisdiction.

If any party to the Note or other Security Documents files a proceeding in any court to resolve any such controversy, dispute or claim, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration under the provisions of this *Section 13.27* of that or any other claim, dispute or controversy, and the court shall, upon motion of any party to the proceeding, direct that such controversy, dispute or claim be arbitrated in accordance with this *Section 13.27*.

Notwithstanding any of the foregoing, the parties hereto agree that no arbitrator or panel of arbitrators shall possess or have the power to (a) assess punitive damages, (b) dissolve, rescind or reform (except that the arbitrator may construe ambiguous terms) the Note or any other Security Document, (c) enter judgment on the debt, (d) exercise equitable powers or issue or enter any equitable remedies, or (e) allow discovery of attorney/client privileged information, and the parties hereby waive the aforementioned remedies. The Commercial Arbitration Rules of the AAA are hereby modified to this extent for the purpose of arbitration of any dispute, controversy or claim arising out of, in connection with, or relating to any Security Document.

No provision of, or the exercise of any rights under, this *Section 13.27* shall limit or impair the right of any party to the Security Documents before, during or after any arbitration proceeding to:

(a) exercise self-help remedies such as set off or repossession; (b) foreclose (judicially or otherwise) any lien on or security interest in any real or personal property collateral; (c) obtain emergency relief from a court of competent jurisdiction to prevent the dissipation, damage, destruction, transfer, hypothecation, pledging or concealment of assets or of collateral securing any indebtedness, obligation or guaranty referenced in the Security Documents; or (d) obtain emergency relief from a court of competent jurisdiction to prevent, if applicable, a party from exercising the remedies set forth in (a) and (b) above. Such emergency relief may be in the nature of, but is not limited to: pre-judgment attachments, garnishments, sequestrations, appointments of receivers, restraining orders, or other emergency injunctive relief to preserve the status quo.

In the event applicable law prohibits the submission of a particular controversy, dispute, or claim arising out of or in connection with any of the Security Documents or transactions contemplated therein to arbitration, Trustor and Beneficiary agree that any actions or proceedings in connection therewith shall be tried and litigated only in the state and federal courts located in the jurisdiction in which the Property is located or any other court in which Beneficiary shall initiate legal or equitable proceedings that has subject matter jurisdiction over the matter in controversy. Trustor and Beneficiary, to the extent permitted by applicable law, waive any right to assert the doctrine of *forum non-conveniens* or to object to the venue to the extent any proceeding is brought in accordance with this paragraph.

13.28 Construction Mortgage. This Deed of Trust secures future advances to be used for construction of the Improvements (as such term is defined in the Loan Agreement) on the Trust Estate pursuant to the Loan Agreement.

13.29 Loan Agreement. In addition to the other obligations described in this instrument, this Deed of Trust secures the payment of all sums and the performance of all obligations and covenants of Trustor contained or referred to in the Loan Agreement. A default in the payment or performance of the obligations set forth in the Loan Agreement shall constitute a default hereunder, and at the option of Beneficiary, the principal sum and all interest and other charges provided for herein and secured hereby shall become due and payable without further notice, anything herein contained to the contrary notwithstanding. In the event of any conflict between the terms of this Deed of Trust and the Loan Agreement, the Loan Agreement shall be the governing instrument.

13.30 Vendor's Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Trust Estate, such proceeds have been advanced by Beneficiary at Trustor's request, and Beneficiary shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Indebtedness and the Obligations, but the terms and provisions of this Deed of Trust shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Beneficiary is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Beneficiary, Trustor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Trust Estate, no vendor's lien is waived; and Beneficiary shall have, and is hereby granted, a vendor's lien on the Trust Estate as cumulative additional security for the Indebtedness. Beneficiary may foreclose under this Deed of Trust or under the vendor's lien without waiving the other or may foreclose under both.

13.31 **Headings.** The article, paragraph and subparagraph titles of this Deed of Trust are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such articles, paragraphs or subparagraphs.

13.32 **Preferential Transfers.** If the incurring of any debt by Trustor or the payment of any money or transfer of property to Beneficiary by or on behalf of Trustor should for any reason subsequently be determined to be “voidable” or “avoidable” in whole or in part within the meaning of any state or federal law (collectively “voidable transfers”), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Beneficiary is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Beneficiary’s counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys’ fees of Beneficiary related thereto, the liability of Trustor and this Deed of Trust, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made

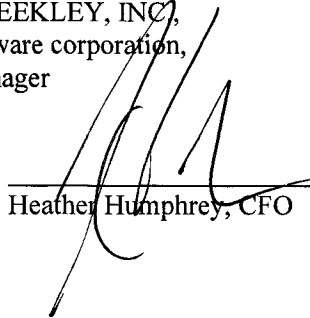
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EXECUTED on the date set forth below to be effective as of the 21 day of October, 2021.

TRUSTOR:

CND-RIDGEVIEW NORTH, LLC,
a Utah limited liability company

By: DM WEEKLEY, INC,
a Delaware corporation,
its Manager

By: 
Heather Humphrey, CFO

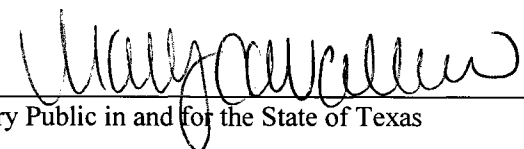
STATE OF TEXAS

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COUNTY OF HARRIS

This instrument was acknowledged before me on the 27 day of October, 2021, by Heather Humphrey, CFO of DM Weekley, Inc., a Delaware corporation and Manager of CND-Ridgeview North, LLC, a Utah limited liability company, for and on behalf of said limited liability company.

[S E A L]


Notary Public in and for the State of Texas

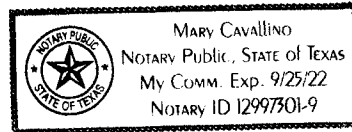


EXHIBIT A**LEGAL DESCRIPTION**

A tract of land located in the Southeast Quarter and the Northeast Quarter of Section 1, Township 5 South, Range 1 East, Salt Lake Base & Meridian, more particularly described as follows:

Beginning at a point on the westerly right-of-way line of North County Boulevard (SR-129) as established by a UDOT Project, Pin No. 16779, located N00°02'46"W 98.18 feet along the Section line and S89°57'14"W 72.36 feet from the East 1/4 Corner of Section 1, T5S, R1E, SLB&M (Basis of Bearing: S00°06'11"E between the East 1/4 Corner and the Southeast Corner of said Section 1); running thence N89°39'11"W 67.46 feet; thence S73°03'19"W 100.01 feet; thence South 41.02 feet; thence West 28.00 feet; thence Northwesterly along the arc of a non-tangent curve to the left having a radius of 28.00 feet (radius bears: West) a distance of 35.13 feet through a central angle of 71°52'52" Chord: N35°56'26"W 32.87 feet; thence S73°03'19"W 235.67 feet; thence S16°56'41"E 77.43 feet; thence S73°02'18"W 82.00 feet; thence S16°57'42"E 119.43 feet; thence Westerly along the arc of a non-tangent curve to the right having a radius of 222.00 feet (radius bears: N04°37'03"W) a distance of 17.89 feet through a central angle of 04°37'03" Chord: S87°41'29"W 17.89 feet; thence West 61.76 feet; thence along the arc of a curve to the right with a radius of 15.00 feet a distance of 23.56 feet through a central angle of 90°00'00" Chord: North 45°00'00" West 21.21 feet; thence North 874.30 feet to a point on the southerly line of a Corrected Special Warranty Deed as Recorded at Entry No. 79132:1998 in the Utah County Recorder's Office; thence along said southerly line, S89°54'26"E 187.95 feet to the westerly line of a Special Warranty Deed as recorded at Entry No. 87358:2010 in the Utah County Recorder's Office; thence along said deed line the following four (4) courses: (1) S00°05'34"W 21.13 feet; thence (2) S86°06'29"E 270.95 feet; thence (3) East 65.14 feet; thence (4) S52°50'22"E 39.12 feet to said westerly right-of-way line of North County Boulevard (SR-129); thence along said westerly right-of-way line S00°20'49"W 501.08 feet to the point of beginning.

PARCEL IDENTIFICATION NO. 12-003-0038

12-003-0031

EXHIBIT B

PERMITTED ENCUMBRANCES

1. The herein described Land is located within the boundaries of Highland City, North Utah County Water Conservancy District, Timpanogos Special Service District, Central Utah Water Conservancy, Wasatch Mental Health Special Service District, North Utah Valley Animal Shelter Special Service District, Utah Valley Dispatch Special Service District, and is subject to any and all charges and assessments levied thereunder.
2. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed herein.
3. Claim, right, title or interest to water or water rights whether or not shown by the Public Records.