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E# 3195060 PG 1 OF 37
Leann H. Kiltz, WEBER COUNTY RECORDER
04-Nov-21 12:16 PM FEE \$40.00 DEP DAK
REC FOR: FNTIC - NCS COLORADO MAIN
ELECTRONICALLY RECORDED

RECORDING REQUESTED BY:
BANK OF THE WEST,
a California banking corporation

AND WHEN RECORDED MAIL TO:

BANK OF THE WEST
Bank of the West
1625 W. Fountainhead Parkway
Tempe, AZ 85282
Attn: Donna Bowen

Tax Parcel ID No. 01-021-0056

[Space Above This Line For Recorder's Use]

**THIS DEED OF TRUST SECURES NOTES WHICH PROVIDE FOR A VARIABLE
INTEREST RATE**

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

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

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of November 1, 2021 by ANDROMEDA HOSPITALITY GROUP, INC., a Colorado corporation, with a mailing address as set forth on the signature page hereto, as "Trustor", in favor of FIDELITY NATIONAL TITLE AGENCY OF UTAH, LLC, with a mailing address as set forth on the signature page hereto, as "Trustee", for the benefit of BANK OF THE WEST, a California banking corporation, with a mailing address as set forth on the signature page hereto, as "Beneficiary", pursuant to that certain Term Loan Agreement of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, "Loan Agreement") which is executed by Trustor and Beneficiary in connection with the Note defined below.

1. GRANT IN TRUST.

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110033620

Deed of Trust

Recording Requested by:
FNTIC-NCS Colorado

1.1 Grant. For the purpose of securing payment and performance of the Secured Obligations (as defined in Section 2 below) Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, its successors and assigns, IN TRUST, WITH POWER OF SALE TOGETHER WITH THE RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, all present and future rights, titles, interests, estates, powers and privileges that Trustor now has or may hereafter acquire in or to the following property and any interest therein (collectively, the “**Trust Property**”) to the extent that Trustor has the legal right to grant, convey, transfer and/or assign the same:

(a) The real property located in the County of Weber, State of Utah, more particularly described in Exhibit A attached hereto (the “**Property**”). The address of the Property (if known) is: 2401 Washington Blvd., Ogden, Utah 84401. However, neither the failure to designate an address nor any inaccuracy in the address designated shall affect the validity or priority of the lien of this Deed of Trust on the Property as described on Exhibit A.

(b) All buildings and other improvements and structures now or hereafter located on the Property (collectively, the “**Improvements**”);

(c) All existing and future leases, subleases, subtenancies, licenses, agreements and concessions relating to the use, occupancy or enjoyment of all or any part of the Property, together with any and all guaranties and other agreements relating to or made in connection with any of the foregoing (individually, a “**Lease**”, and collectively, the “**Leases**”);

(d) All rents, issues, income, revenues, royalties, profits, proceeds and earnings now or hereafter payable with respect to or otherwise derived from the ownership, use, management, operation, leasing or occupancy of the Property and the Improvements, including, without limitation, letters of credit, lease bonds, cash, security deposits or other security substitutes, credit enhancements and other like items under or with respect to any of the Leases (collectively, “**Rents**”);

(e) All tenements, hereditaments, appurtenances, privileges, choses in action, options to purchase all or any part of the Property or Improvements or any interest therein (and any greater estate in the Property or Improvements now owned or hereafter acquired by Trustor pursuant thereto), and other rights and interests now or in the future benefiting or otherwise relating to the Property or the Improvements, including, without limitation, streets, roads, easements, rights-of-way, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property, development rights or credits, oil, gas, other mineral rights and other hydrocarbon substances in, on or under the Property and all royalty, leasehold and other rights of Trustor pertaining thereto;

(f) All air rights, water and water rights pertaining to the Property, and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by Trustor with respect to the Property;

(g) All policies of insurance (whether or not such policies are required to be maintained under the terms of the Insurance Agreement (as defined in the Loan Agreement)) and all claims, demands or proceeds relating to such insurance which Trustor now has or may

hereafter acquire with respect to the Property or the Improvements situated thereon, including all advance payments of insurance premiums made by Trustor with respect thereto, and all interest which may accrue on any of the foregoing;

(h) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Trust Property or Collateral and all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Trust Property or Collateral, and all interest which may accrue on any of the foregoing;

(i) All personal property constituting fixtures under the UCC (as defined in Section 5 hereof) as a result of being now or hereafter affixed or attached to the Property or any part thereof, and all renewals or replacements thereof or articles in substitutions thereof;

(j) All (i) accounts, chattel paper, deposit accounts, money, documents and instruments (whether negotiable or nonnegotiable), contract rights, insurance policies, and all rights to payment of any kind, including, without limitation, those relating to or otherwise arising in connection with or derived from the Property, the Improvements or any other part of the Trust Property, (ii) all deposit accounts held by Beneficiary, including, without limitation, those relating to or otherwise arising in connection with or derived from the Property, the Improvements or any other part of the Trust Property, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, (iii) refunds, rebates, reserves, deferred payments, deposits, cost savings, letters of credit, and payments of any kind due from or payable by (A) any federal, state, municipal or other governmental or quasi-governmental agency, authority or district (each, a “**Governmental Agency**”), or (B) any insurance or utility company, in either case relating to any or all of the Trust Property, (iv) refunds, rebates and payments of any kind due from or payable by any Governmental Agency for any taxes, assessments, or governmental or quasi-governmental charges or levies imposed upon Trustor or upon any or all of the Trust Property, (v) guarantees of any of the foregoing and any security therefor, (vi) cash funds and cash collateral accounts maintained with Beneficiary pursuant to any of the Loan Documents or otherwise maintained by Trustor with Beneficiary, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and (vii) proceeds and claims arising on account of any damages to or taking of the Property or any part thereof, and all causes of action and revenues for any loss or diminution in the value of the Property or Improvements;

(k) All general intangibles relating to or arising out of the ownership, design, development, operation, management and use of the Property and Improvements, including, but not limited to, (i) all names under which or by which the Property or the Improvements may at any time be operated or known (other than “Hampton Inn & Suites” or derivatives thereof), all rights to carry on business under any such names or any variants thereof, and all goodwill in any way relating to the Property, (ii) all permits, licenses, authorizations, variances, land use entitlements, approvals and consents issued or obtained in connection with the construction of the Improvements, (iii) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the use, occupancy or operation of the

Property, (iv) all rights as a declarant (or its equivalent) under any covenants, conditions and restrictions or other matters of record affecting the Property, provided, however, that Beneficiary shall have no liability under such declarant's rights unless and until Beneficiary forecloses on the Property, (v) all materials prepared for filing or filed with any Governmental Agency, (vi) all rights under any contract in connection with the development, design, use, operation, management and construction of the Property, (vii) all books and records prepared and kept in connection with the acquisition, construction, operation and occupancy of the Property and the Improvements, and (viii) all royalties, fees and goodwill associated with any of the foregoing (subject to any franchise or license agreements relating thereto);

(l) Whether or not included in Section 1.1(f), all water stock, shares of stock or other evidence of ownership of any part of the Property or the Improvements that is owned by the Trustor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property or Improvements, and all documents of membership in any membership facility developed on the Property;

(m) All surety, bonding, security, construction, architectural, engineering, development, financing, guaranty, indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts and subcontracts, all insurance policies, and all licenses and bonds, in any way pertaining to the development, construction, use, operation and maintenance of the Property and Improvements and any business of Trustor therein conducted, and all guarantees of any of the foregoing and any security therefor;

(n) All sales agreements, escrow agreements, deposit receipts and other documents and agreements for the sale or other disposition of all or any part of the real or personal property described herein, and deposits, proceeds and benefits arising from the sale or other disposition of all or any part of such real or personal property;

(o) All engineering and architectural drawings, plans, specifications, soils tests and reports, feasibility studies, appraisals, engineering reports, manuals, computer software, studies, data and drawings pertaining to any or all of the property described in Sections 1.1(a) through (n), and all contracts and agreements relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings;

(p) All ledger sheets, files, records, documents and instruments (including, but not limited to, computer programs, tapes, and related electronic data processing software) evidencing an interest in or relating to the foregoing collateral in Sections 1.1(a) through (o), or in this Section 1.1(p); and

(q) All of the following, which is intended to supplement the description in Section 1(a) through (p) above:

(i) Certain Defined Items of Collateral. All Accounts, Contracts, Documents, Equipment, General Intangibles, Hotel Revenues, Instruments, Inventory, Money and Permits, each as defined below.

(ii) Definitions. As used in this Deed of Trust, the following terms shall have the following meanings:

(1) “Accounts” means accounts (as defined in the UCC) arising out of or in connection with the operation of the Improvements (including the Hotel and Hotel Revenues) and all other accounts (including bank accounts, reserve accounts, and reserve accounts for replacement of fixtures, furnishings and equipment), including all accounts receivable, inventory accounts, contract rights, chattel paper, notes, acceptances, insurance policies, Instruments, Documents or other rights to payment and all forms of obligations owing at any time to Trustor thereunder, and all liens, security interests, guaranties, remedies, privileges and other rights pertaining thereto, and all rights and remedies of any kind forming the subject matter of any of the foregoing. Without limiting the generality of the foregoing, the term “Accounts” shall include Trustor’s entire interest in:

a. Income. All income, rents, issues, profits, revenues, deposits and other benefits from the Improvements;

b. Rents, Receivables. All receivables and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by any Trustor or any operator or manager of the Improvements or space located at the Improvements or the Hotel or acquired from others (including Hotel Revenues and revenues from rental of space, halls, stores, and offices, and deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club fees, proceeds from the wholesale and retail sales of merchandise, service charges, and vending machine sales);

c. Money, Instruments, Etc. All sums of Money, and all instruments, documents and securities held in any accounts in connection therewith, or any demand, time, savings or other account maintained with any bank or certificate of deposit issued by any bank with the proceeds of such account;

d. Reserves, Deposits, Etc. All reserves, deferred payments, deposits, refunds, receivables and payments of any kind relating to the construction, operation, alteration, marketing or promotion of the Hotel or any Improvements or held by any third party pursuant to a Contract; and

e. Books and Records. All records and books of account now or hereafter maintained (whether on paper or in electronic or other form) by or on behalf of Trustor in connection with the operation of the Improvements or in connection with any items of Collateral.

(2) “Contracts” means all contracts with property managers, surveyors, real estate advisors and consultants, real estate brokers, and other like agents and professionals that relate to any of the Improvements or any improvements constructed or to be constructed or altered on the Improvements; any leases, installment purchase agreements, or other documents or arrangements that permit Trustor to use any Equipment; any Garage Agreement; all agreements or contracts to which Trustor is a party or that are assigned to Trustor; all agreements or contracts in connection with the construction, operation, management, marketing or promotion of the Improvements or the Hotel (including agreements for the sale, lease, or exchange of goods or other property and/or the performance of services, in each case whether now in existence or hereafter arising or acquired) including, but not limited to, that certain Hotel Management Agreement dated December 14, 2009, as amended from time to time, between Trustor and Stonebridge Realty Advisors, Inc., a Colorado corporation, d/b/a Stonebridge Companies; all agreements relating to reservations systems, hotel group, name, franchise, licensing, chain affiliation, telephone or utility service (including the use of “800,” or “888,” “877,” or other telephone numbers exclusive to the Hotel); all contracts and agreements relating to the construction, maintenance, operation, occupancy, repair, servicing, provisioning, advertising, promotion, sale, alteration, development, use, or financing of the Improvements, the Hotel, or any portion thereof, or for the purchase of materials for any of the foregoing purposes; contracts for the performance of work, or the providing of furnishings, fixtures, goods, services, material or equipment, for or relating to the construction, development, equipping or fixturing of the Improvements, including any and all construction management agreements, architectural agreements, construction consulting agreement(s), general contract(s) and subcontracts; all warranties and guaranties relating to the Improvements or the Hotel, including any warranties or guaranties provided by any contractor, subcontractor, designer, architect, or other party with respect to the Improvements or the Hotel; all contracts and agreements of Trustor relating to plans, specifications, studies, data, drawings and models relating to the Improvements or any development, improvement or alteration thereof; all contracts by which Trustor (including for the benefit of Trustor’s guests) obtains the right to use any recreational facilities, nearby real property, or other real property of any kind for any purpose (including parking, recreation, or otherwise for the benefit of the Hotel); all amendments, modifications, and supplements relating to any of the foregoing from time to time; and all contract rights, claims, and interests of any kind held by Trustor arising under any of the foregoing or otherwise against or with respect to any third party whatsoever.

(3) “Documents” means all “documents” as defined in the UCC or other receipts covering, evidencing, or representing property of any kind now owned or hereafter acquired by Trustor.

(4) “Equipment” means all “equipment” as defined in the UCC, now or hereafter owned by Trustor or in which Trustor has or shall acquire an interest (leasehold or otherwise), now or hereafter located on, attached to or

contained in or used or usable in connection with the Improvements (including in connection with the marketing and promotion of the Hotel), together with all building materials, construction materials, personal property constituting furniture, fittings, appliances, apparatus, leasehold improvements, machinery, devices, interior improvements, appurtenances, equipment, plant, furnishings, fixtures, computers, electronic data processing equipment, televisions, telephones, telephone switchboards, telecommunications equipment and other fixed assets now owned or hereafter acquired by Trustor and now or hereafter used in the operation of the business conducted at the Improvements, and all attachments, components, parts (including spare parts) and accessories, whether installed thereon or affixed thereto, and wherever located, now or hereafter owned by Trustor and used or intended to be used in connection with, or in connection with the operation of, the Improvements or the buildings, structures, or other improvements now or hereafter located at the Improvements, or in connection with any construction being conducted or that may be conducted on the Improvements, or for the Hotel, all regardless of whether the same are located on the Improvements or are located elsewhere (including in warehouses or other storage facilities or in the possession of or on the Improvements of a bailee, vendor, or manufacturer) for purposes of manufacture, storage, use, fabrication, or transportation. For purposes of the preceding sentence, "other fixed assets" shall include any and all "furniture, furnishings, and equipment," as such term is commonly understood in the hotel industry, of the Hotel, including any and all: fixtures, furnishings, equipment, furniture, and other items of tangible personal property now or hereafter located in, on at the Improvements or in the Hotel or used in connection with the use, occupancy, operation, promotion, marketing, repair, or maintenance of all or any part of the Improvements, other than stocks of food and other supplies held for consumption in normal operation; appliances; machinery; equipment; athletic equipment (including weight machines, stair machines, stationary bicycles, dumbbells, free weights, treadmills, and all other exercise equipment of whatever form); bicycles; carts; signs; artwork (including paintings, prints, graphics, sculpture, and other artwork of any kind); office furnishings and equipment; guest room furniture and furnishings; and specialized equipment for kitchens, laundries, bars, restaurant, public rooms, and health and recreational facilities; linens; dishware; two-way radios; telephones; switchboards; switching equipment and machines; satellite dishes; partitions, screens, awnings, shades, blinds, and floor coverings; hall and lobby equipment; heating, lighting, plumbing, ventilating, refrigerating, and incinerating equipment; elevators; escalators; air conditioning and communications machines, plants or systems with appurtenant fixtures; vacuum cleaning systems; call or beeper systems; security systems; sprinkler systems and other fire prevention and extinguishing apparatus and materials; all computer, data processing and related equipment, including peripherals, diskettes, manuals, hand-held data entry units, and network wiring, cabling, peripherals, and equipment; antennas; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; ducts; building supplies wherever

located; tools; all vehicles used or useful in operation of the Hotel; all marketing materials, videotapes, promotional materials, brochures, and presentations used or useful in marketing and promotion of the Hotel; and all other personal property of any kind whatsoever not otherwise referred to in this definition of "Property."

(5) "Garage Agreement" means any lease, sublease, license, operating agreement, or other agreement or arrangement, however designated, with any operator of any garage or other parking facility or service located on or at the Property, or otherwise serving the Improvements, if any, together with any successor or replacement such agreement

(6) "General Intangibles" means all "general intangibles" as defined in the UCC. General Intangibles include:

a. Generally. All obligations or indebtedness owing to Trustor from whatever source arising (other than Accounts, Contracts, Instruments, Inventory, Money, Permits, Rents, and Trademarks);

b. Unearned Premiums; Proceeds. All unearned premiums accrued or to accrue under all insurance policies for the Improvements obtained by Trustor, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including proceeds of insurance, condemnation awards, and all rights of Trustor to refunds of Impositions);

c. Licenses; Royalties. All royalties, franchise, and license fees, and any rights to refunds thereof;

d. Intellectual Property. All Trademarks, rights in intellectual property, goodwill, trade names, service marks, trade secrets, copyrights, permits and licenses, together with the registrations therefor and the goodwill appurtenant thereto (but to the extent that any of the foregoing is licensed from an unaffiliated third party, the General Intangibles shall include only Trustor's rights as licensee thereof);

e. Refunds. All rights or claims in respect of refunds for Impositions or other sums paid;

f. Other Third-Party Claims. Any and all claims, rights and remedies of any Trustor against any other party with respect to any component of the Property or any portion thereof, including all claims, rights and remedies of any Trustor under any Account, Contract, Document, Hotel Revenues, Instruments, Lease, or other component of the Property, together with all damages and rights to receive damages on account of any breach of the foregoing and all rights of any kind to enforce the foregoing against any other party thereto, including any covenants, indemnities, warranties and representations under any of the foregoing, together with any and all rights and claims (including the right

to vote or make elections on account of such rights or claims) arising in any bankruptcy or insolvency proceeding on account of any of the foregoing;

g. Project Documents. All maps, reports, surveys and studies of or relating to any of the Improvements, or any improvements constructed or to be constructed or altered on the Improvements, now or hereafter in the possession of any Trustor or of any agent or professional engaged by or otherwise acting for any Trustor; and

h. Other Intangibles. All other intangible property and rights of any kind or type whatsoever relating to the Improvements or the Hotel or the development or operation of either, or used in connection with either.

(7) "Hotel" means the hotel located on and constituting a part of the Improvements (including all Improvements constituting part of such hotel), including all improvements thereto and all replacements thereof.

(8) "Hotel Revenues" means all fees, charges, accounts, and/or other payments for the use or occupancy of rooms and other public facilities in the Hotel, together with the right to receive such fees, charges, accounts, or other payments, and including fees, charges, accounts, and/or other payments arising from the following: (a) sale of food and beverages at the Hotel, whether in a restaurant, through "room service" dining, or through banquets, catering facilities, and services; (b) sales of food and beverages from mini-bar facilities in guest rooms; (c) laundry, vending machine and telecommunications receipts, whether billed to a Hotel guest or collected in cash; (d) use, rental, occupancy or licensing of hotel rooms, hotel suites, conference rooms, meeting rooms, ballrooms, and other rooms and facilities; (e) operation of health club, personal care, and other facilities located in, on or at the Hotel; (f) incidental charges to Hotel guests or other users or customers; (g) any other charges of any kind, for the direct or indirect benefit of Trustor, that appear on any bill or statement rendered to any Hotel guest or other user or customer of the Hotel or are otherwise collected from or paid by any such person; (h) any payments of any kind from credit card companies, travel agents, or reservation systems or services relating to the Hotel; (i) charges for the parking of cars (whether "self- parking" or "valet parking") at or near the Hotel; and (j) data usage costs or fees for accessing on-site wi-fi networks.

(9) "Impositions" means any or all real estate taxes, assessments, water and sewer charges, insurance premiums, and other charges collected or assessed by any Governmental Authority with respect to the Improvements, all as paid or payable with respect to the Improvements from time to time.

(10) “Instruments” means (i) all “instruments” as defined in the UCC, “chattel paper” as defined in the UCC, or letters of credit, evidencing, representing, arising from or existing in respect of, relating to, securing or otherwise supporting the payment of, any of the Collateral (including promissory notes, drafts, bills of exchange and trade acceptances) and chattel paper obtained by any Trustor in connection with the Property (including all ledger sheets, computer files, diskettes, records and printouts, data bases, programs, software, books of account and files of Trustor relating thereto) and (ii) notes or other obligations of indebtedness owing to Trustor from whatever source arising.

(11) “Inventory” means all inventory as defined in the UCC owned by Trustor including all inventory arising out of or used in connection with, directly or indirectly, the ownership, management, use, possession, occupancy, or operation of the Improvements, including all documents representing the same. The term “Inventory” shall include:

a. Goods and Materials. All goods, merchandise, raw materials, food, beverages (both nonalcoholic and, subject to applicable law, alcoholic), cleaning supplies, soap and personal care items, towels, linens, work in process and other personal property, wherever located, now or hereafter owned or held by Trustor for manufacture, processing, the providing of services or sale, use or consumption in the operation of the Improvements or the Hotel (including fuel, supplies, and similar items and all substances commingled therewith or added thereto);

b. Inventories, China, Etc. All other items that would be entered on a balance sheet under the line items for “Inventories” or “China, glassware, silver, linen and uniforms” under the Hotel Association of New York City, Inc. Uniform System of Accounts for the Lodging Industry; and

c. Inventory-Related Claims. All rights and claims of Trustor against anyone who may store or acquire any Inventory for the account of Trustor, or from whom Trustor may purchase any Inventory.

(12) “Money” means all moneys, cash, rights to deposit or savings accounts or other items of legal tender obtained from or for use in connection with the operation of the Improvements, including any refunds of Impositions.

(13) “Permits” means all licenses, permits, variances and certificates used in connection with the ownership, operation, construction, renovation, rehabilitation, alteration, development, public assembly, use or occupancy of or other activities on the Improvements (including liquor licenses, business licenses, state health department licenses, two-way radio licenses, licenses to conduct business and all such other permits, licenses and rights,

obtained from any Governmental Authority or private person concerning the foregoing).

(14) “Proceeds” shall have the meaning given in the UCC and, in any event, shall include all proceeds, product, rents, profits or receipts, in whatever form and however payable, arising from the Property. The term “Proceeds” shall include (or also include, as applicable) Trustor’s entire interest in:

a. Cash, Instruments, Etc. Cash, Instruments and other property received, receivable or otherwise distributed in respect of or in exchange for any or all of the Property or the Improvements;

b. Realization Events. The collection, sale, lease, sublease, concession, exchange, assignment, licensing or other disposition of, or realization upon, any item or portion of the Property or the Improvements (including all claims of any Trustor against third parties for loss of, damage to, destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance in respect of, any Property or the Improvements now existing or hereafter arising);

c. Insurance, Etc. Any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Trustor from time to time with respect to any of the Property or the Improvements, including insurance against business interruption, rental interruption, or other loss of income;

d. Condemnation. Any and all payments made or due and payable to any Trustor from time to time in connection with the requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Property or the Improvements by any Governmental Authority (or any person acting under color of Governmental Authority), including any award, including interest thereon, in eminent domain proceedings for a taking (including any transfer made in lieu of the exercise of said rights) or for loss of value of or to the Improvements or the Improvements or for a change in the grade of any street or other public way; and

e. Other Amounts. Any and all other amounts from time to time paid or payable under or in connection with any of the Property or the Improvements.

(15) “Trademark” means any and all trademark licenses, trademarks, rights in intellectual property, trade names, service marks and copyrights relating to the Improvements (or any portion thereof) or the license to use intellectual property such as computer software owned or licensed by Trustor or other proprietary business information relating to Trustor’s policies, procedures, manuals and trade secrets, together with all corporate names,

company names, business names, trade styles, service marks, logos and other source or business affiliation identifiers, all names under or by which the Property or any present or future Improvements (or any portion of either) may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection with the foregoing, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, all goodwill associated with any or all of the foregoing, and any renewals or extensions of any of the foregoing.

(iii) Incremental Property. To the extent, if any, that the foregoing definition of Property includes any property or rights of any kind, nature, type, or character that is broader or more extensive (the "Incremental Property") than the description of property or description of Beneficiary's collateral as set forth in any pledge, security agreement or other document granting a security interest entered into by Trustor in favor of Beneficiary, Trustor hereby declares and affirms that (except to the extent that Beneficiary elects otherwise in writing as to any document(s) and/or any Incremental Property) each such pledge, security agreement or other document was intended to (and is hereby amended to) include and list all Incremental Property, so that Beneficiary's security interest shall also apply to (and is hereby extended by Trustor to cover) all Incremental Property.

(iv) Liquor Licenses. Notwithstanding anything to the contrary in the foregoing definition of Property, the "Property" shall include liquor licenses and alcoholic beverages only to the extent that, under applicable law and regulations, Trustor is legally permitted to assign or pledge Trustor's interest in liquor licenses and alcoholic beverages to Beneficiary.

(v) Interpretation, Generally. As used herein, the word "include" and its variants shall be interpreted as if followed by the words "without limitation," and any headings or captions are not intended to limit, qualify, or interpret the text; and

(r) All additions and accretions to, substitutions and replacements for, and proceeds and products of, any of the foregoing. The listing of specific rights or property shall not be interpreted as a limit of general terms.

2. SECURED OBLIGATIONS. Trustor makes the grant, conveyance, transfer and assignment set forth in Section 1 above FOR THE PURPOSE OF SECURING the following obligations (collectively, the "**Secured Obligations**") in such order of priority as Beneficiary may elect:

(a) Payment of all sums at any time owing and the performance of all other obligations arising under that certain Promissory Note in a maximum aggregate principal amount of Five Million and 00/100 Dollars (\$5,000,000.00) dated of even date herewith, executed by

Trustor to the order the Beneficiary (as amended, restated, supplemented or otherwise modified from time to time, the “**Note**”);

(b) Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of Trustor contained herein, in the Loan Agreement and in any other instrument or document heretofore or hereafter executed by Trustor having reference to or arising out of the indebtedness evidenced by the Note;

(c) Performance of all future advances and other obligations that Trustor may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary; and

(d) Payment and performance of all covenants and obligations of Trustor under any interest rate swap agreement, or other interest rate agreement executed by and between Trustor and Beneficiary; and

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

The term “obligations” is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges, extension fees, renewal fees and loan fees at any time accruing or assessed on any of the Secured Obligations.

All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Trust Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that (b) the rate of interest on one or more Secured Obligations may vary from time to time.

3. RIGHTS AND DUTIES OF THE PARTIES.

3.1 Title. Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Trust Property without limitation on the right to encumber, and that this Deed of Trust is a first and prior lien on the Trust Property.

3.2 Performance of Obligations. Trustor shall promptly pay and perform the Secured Obligations when due.

3.3 Maintenance, Repair and Alterations. Except as expressly provided in the Loan Agreement and the Insurance Agreement, Trustor shall (a) keep the Trust Property in good condition and repair; (b) except for normal capital improvements performed in the ordinary course of business, not remove, demolish or substantially alter any of the Trust Property or

Collateral or any part without the prior written consent of Beneficiary; (c) complete or restore promptly and in good and workmanlike manner any Improvements which may be constructed, damaged or destroyed on the Property without regard to whether Beneficiary elects to require that insurance proceeds be used to reduce the Secured Obligations as provided in Section 3.5; (d) comply with all laws, ordinances, regulations, covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which now or hereafter affect the Trust Property or any part thereof or requiring any alterations, improvements or alterations to be made thereon (including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements); (e) not commit or permit any material waste of the Trust Property (normal wear and tear excepted); and (f) do all other acts which from the character or use of the Trust Property or Collateral may be commercially reasonably necessary to maintain and preserve its value.

3.4 Defense and Notice of Losses, Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Trust Property and Collateral and title to and right of possession of the Trust Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Trust Property or Collateral and of any condemnation offer or action. Beneficiary shall have the right, but not the obligation, at Trustor's expense, to take all necessary and proper steps for the defense of such title or interest, and to participate in any such proceedings, to control same and to be represented therein by counsel of its choice at Trustor's expense, and Trustor shall deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation.

3.5 Maintenance of Insurance; Damages; Application of Insurance Proceeds.

(a) Maintenance of Insurance. Trustor shall comply with its obligations under the Insurance Agreement.

(b) Payment of Proceeds. Subject to applicable law, and without regard to any requirement contained in Section 3.3, Trustor shall pay to Beneficiary, promptly upon Trustor's receipt of same, any proceeds received by Trustor under any such insurance policy on account of any damage or destruction to the Improvements for which the resulting claims exceed \$200,000 (or, if an Event of Default then exists, all such proceeds regardless of amount of the claim). Beneficiary shall have the right to join Trustor in adjusting any loss covered by any such insurance, and Trustor hereby authorizes and empowers Beneficiary, at Beneficiary's sole option and in Beneficiary's sole discretion as attorney-in-fact for Trustor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection thereof. If Beneficiary elects not to exercise such right, Beneficiary shall be under no obligation to question the amount of any compensation, award, recovery, settlement, proceeds, damages, claims, rights of action or payments received under any policy of insurance on account of any damage or destruction to the Improvements, and may accept the same in the amount paid.

(c) Application of Insurance Proceeds. In the event of any damage to or destruction of the Improvements, Beneficiary shall have the option, in its sole discretion, to: (i) apply, in the event Beneficiary determines that the security for the repayment of the Secured Obligations has been impaired on account of such damage or destruction, all or any part of such proceeds to the Secured Obligations in such order as Beneficiary may determine, whether or not such indebtedness is then due, (ii) release all or any part of such proceeds to Trustor, or (iii) hold the balance of such proceeds to be used to reimburse Trustor for the cost of reconstruction of the Improvements. In the event Beneficiary elects to so hold such proceeds, the Improvements shall be promptly and diligently restored by Trustor to the equivalent of their condition immediately prior to such damage, destruction or casualty or to such other condition as Beneficiary may approve in writing, and the disbursement of such insurance proceeds shall be in accordance with disbursement procedures acceptable to Beneficiary. Beneficiary may condition such application upon reasonable conditions, including, without limitation: (A) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (B) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (C) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (D) the delivery to Beneficiary of evidence acceptable to Beneficiary (1) that after completion of the work the income from the Trust Property will be sufficient to pay all expenses and debt service for the Trust Property; (2) of the continuation of Leases acceptable to and required by Beneficiary; (3) that upon completion of the work, the size, capacity and total value of the Trust Property will be at least as great as it was before the damage or condemnation occurred; (4) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (5) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within sixty (60) days of receipt by Beneficiary of such proceeds, then Beneficiary may apply such proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose. If Beneficiary elects to apply the proceeds to the payment of the sums secured hereby in accordance with the provisions hereof, and after doing so Beneficiary determines that the remaining security is inadequate to secure the remaining indebtedness, Trustor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the remaining indebtedness to a balance for which adequate security is present. For purposes of this section, it shall be reasonable for Beneficiary to deem its security impaired if the loan to value ratio originally approved by Beneficiary for the Loan is exceeded by the ratio of the maximum principal balance to the reduced value of the Property. Any such application of proceeds shall not cure or waive any Event of Default or notice of any Event of Default hereunder or invalidate any act done pursuant to such notice. The terms of this Section 3.5 concerning the adjustment of losses and the collection, control and application of proceeds shall apply to any insurance proceeds, inclusive of earthquake insurance, whether or not Beneficiary has required Trustor to procure or maintain such insurance.

3.6 Condemnation. All compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action and payments to which Trustor may become entitled to on account of such proceedings shall be paid to Beneficiary. Any sums so collected by Beneficiary shall first be applied to reimburse Trustee and Beneficiary for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such sums, and the balance shall be applied, in the event Beneficiary determines that the security for the repayment of the Secured Obligations has been impaired on account of such condemnation, to any Secured Obligations, in such order as Beneficiary may determine, whether or not any of such Secured Obligations are then due, except that if Beneficiary's security interest is not materially impaired as a result thereof, as determined by Beneficiary in its reasonable discretion, Beneficiary shall hold such proceeds to be applied to the restoration of the Trust Property in the same manner and pursuant to the same procedures, standards, and elections on the part of Beneficiary as are provided in Section 3.5(b) with respect to insurance proceeds. Any surplus remaining after payment and satisfaction of the Secured Obligations shall be paid to Trustor as its interest may then appear. If Beneficiary elects to apply the condemnation proceeds to the payment of the Secured Obligations, and after doing so Beneficiary determines that the remaining security is inadequate to secure the remaining Secured Obligations, Trustor shall, upon written demand from Beneficiary, prepay on principal such amount as will reduce the Secured Obligations to a balance for which adequate security is present. For purposes of this section, it shall be reasonable for Beneficiary to deem its security impaired if the loan to value ratio originally approved by Beneficiary for the Loan is exceeded by the ratio of the maximum principal balance of the Loan to the reduced value of the Property and Improvements. Any such application of proceeds shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall be under no obligation to question the amount of any compensation, awards, recoveries, settlement, proceeds, damages, claims, rights of action or payments received in any such condemnation proceeding, and may accept the same in the amount paid.

3.7 Taxes. Trustor shall pay prior to delinquency, all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Trust Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Trust Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation. Upon Beneficiary's request, Trustor shall deliver to Beneficiary official receipts of the appropriate taxing authority (or other proof satisfactory to Beneficiary) evidencing the payment thereof.

3.8 Impounds. At any time during the continuance of an Event of Default, at Beneficiary's option, Beneficiary may require Trustor to establish and maintain an impound account with Beneficiary into which Trustor monthly shall deposit an amount established by Beneficiary as Beneficiary's estimate of one-twelfth (1/12th) of the annual amount of all taxes, assessments, encumbrances, charges and liens coming due during each calendar year and premiums for fire, hazard and insurance required or requested pursuant to the Loan Documents (as defined in the Loan Agreement) when same are next due, such sums to be applied by Beneficiary to payment of these amounts when due, to be replenished by Trustor at any time upon ten (10) days' notice if Beneficiary determines the amount it holds to be insufficient to pay

the foregoing obligations as they become due. Beneficiary, except as otherwise required by applicable law, shall (i) not be required to pay interest on any funds held hereunder, (ii) be authorized to assign any funds held by it to any successor holder of the Beneficiary's interest in this Deed of Trust and thereupon be relieved of any further obligation for the application or refund of such sums, and (iii) at any time, at its option, following default, apply funds held hereunder to the Secured Obligations. Beneficiary shall, unless an Event of Default has occurred and is continuing under this Deed of Trust or under any other Loan Document, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon the occurrence of an Event of Default, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Event of Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of an Event of Default not cured by such application. Within ninety-five (95) days following full repayment of the Secured Obligations (other than full repayment of the Secured Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Secured Obligations) or at such earlier time as Beneficiary may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Trustor and no other party shall have any right or claim thereto.

3.9 Liens.

(a) Trustor shall promptly discharge or bond over to Beneficiary's reasonable satisfaction any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Subject to the provisions of the Loan Agreement regarding mechanics' liens, Trustor shall pay when due all obligations secured by or which may become liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Trust Property or Collateral, or any interest therein, whether senior or subordinate hereto. Notwithstanding the foregoing, Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* Section 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* Section 38-1a-804 to release the Trust Property from such lien or claim, provided, however, that Trustor may, with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* Section 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security. In the event that Trustor shall fail to remove and discharge any such lien, encumbrance or charge as required in this paragraph, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Trust Property from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account of Trustor and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by *Utah Code Annotated* Section 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses actually incurred by Trustor in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any

bond or additional security, together with interest thereon from the date of such expenditure at the Default Interest rate set forth in the Loan Agreement.

(b) Notwithstanding anything set forth in Sections 3.7 or 3.9(a) so long as no Event of Default exists hereunder, Trustor shall have the right to contest the amount or validity in whole or in part of any lien, tax, encumbrance or other charge against the Trust Property by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, in which event Trustor, upon written notice to Beneficiary, may defer payment of any such lien, tax, encumbrance or other charge, so long as (i) Trustor shall provide Beneficiary with evidence reasonably satisfactory to Beneficiary that such proceedings shall operate to prevent the sale of the Trust Property or any portion thereof, or the imposition of any penalties on Trustor or the Trust Property, in connection with such lien, tax, or encumbrance; (ii) neither the Trust Property nor any part thereof will, by reason of such postponement or deferment, be in danger of being forfeited or lost; (iii) before the date such lien, tax, encumbrance or other charge becomes delinquent, Trustor shall provide Beneficiary with such security as Beneficiary may require to insure payment thereof and prevent any forfeiture or loss of the Trust Property or any part thereof; and (iv) on a final determination of such contest, which is not appealable or is not being appealed, Trustor shall pay the amount of the lien, tax, encumbrance or other charge if and when due. In the event Trustor elects to exercise its right to contest in accordance with the foregoing sentence, unless Trustor exercises its rights pursuant to applicable law to record a bond in order to release the Trust Property from a lien and any action brought to recover the amount claimed in such lien, Trustor acknowledges and agrees that Beneficiary and Banks shall have no obligation to advance any additional amounts under the Loan until the earlier of the full payment of the lien, tax, encumbrance or charge at issue or a final determination that such contested amounts are not valid and thus not payable.

3.10 Further Assurances. Trustor will, at the request of Beneficiary, execute, deliver and furnish such documents or take such further action as Beneficiary may reasonably deem necessary or desirable to evidence Trustor's obligations under the Secured Obligations, perfect the security therefor, or otherwise carry out the terms of this Deed of Trust and any of the other documents delivered to Beneficiary in connection herewith.

3.11 Due on Sale or Encumbrance. Except as expressly provided in the Loan Agreement or herein, Trustor shall not, directly or indirectly, sell, convey, transfer, dispose of, grant a lien or security interest in, assign, further encumber, mortgage, hypothecate, transfer, alienate or otherwise dispose of the Trust Property or any part thereof or any interest therein, including, without limitation, air rights or development rights, whether voluntarily, involuntarily, by operation of law or otherwise, or lease all or any portion thereof or an undivided interest therein, or enter into an agreement so to do, without the prior written consent of Beneficiary. If Trustor at any time without Beneficiary's express prior written consent shall do, suffer or permit the occurrence of a transaction otherwise prohibited under this Section 3.11, then the Note and all sums secured hereby shall be immediately due and payable without claim, notice or demand. In such event, if all sums declared due and payable under the Notes are not paid within the time declared due and payable, then Beneficiary may thereupon exercise all rights and remedies, including foreclosure of the liens herein set forth, of Beneficiary as in the case of the failure to pay, when due, the Secured Obligations. Any consent by Beneficiary permitting a transaction otherwise prohibited under this Section 3.11 shall not constitute a consent to or waiver of any

right of Beneficiary to withhold its consent on any subsequent occasion to a transaction not otherwise permitted by the provisions hereof. Notwithstanding the foregoing, Beneficiary may, at its option, consent to any such sale or other conveyance and condition its consent upon, among other things, the following: (i) payment of all assumption, transfer or other fees which may be required pursuant to the Loan Agreement, (ii) reimbursement of Beneficiary for all costs and expenses, including reasonable attorney's fees, actually incurred in connection therewith, (iii) assumption by the proposed transferee of all obligations of the Trustor hereunder and of the maker under the Notes without the release of Trustor or such maker, (iv) receipt of evidence, satisfactory to Beneficiary, that the proposed transferee is as creditworthy and as capable in managing the Trust Property, and (v) receipt of evidence, satisfactory to Beneficiary, that the proposed transfer will not impair the security of Beneficiary for repayment of the Secured Obligations.

3.12 Security Interests. Except as otherwise expressly permitted in the Loan Agreement, all equipment, personal property, fixtures and other property subject to the lien of the security interest granted to Beneficiary in this Deed of Trust shall be fully paid for by Trustor, and shall be subject to no security interest, lien or other encumbrance, other than that granted to Beneficiary.

3.13 Releases, Extensions, Modifications and Additional Security. Without affecting the liability or obligations of any person, including Trustor, for the performance of any obligations secured hereby (excepting only any person or property otherwise expressly released in writing by Beneficiary) releasing or impairing the priority of the lien of and security interests created by this Deed of Trust upon the Trust Property and Collateral, Beneficiary may, from time to time and without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Trust Property and Collateral or in any manner obligated under the Secured Obligations, release any person or entity liable for payment of any of said indebtedness or the performance of any of said obligations, take any action or make any agreement to extend the time of payment, increase the amount of any Secured Obligation or otherwise alter the terms of any of said obligations, accept additional security therefor of any kind, including trust deeds or mortgages, or alter, substitute or release all or a portion of any property securing said obligations. If the ownership of the Trust Property or any part thereof becomes vested in a person other than Trustor, or in the event a change of ownership in Trustor occurs, if the Secured Obligations are not satisfied in full in connection with such transfer, Beneficiary may, without notice to Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and to the Secured Obligations in the same manner as with Trustor, without in any way affecting or discharging Trustor's liability hereunder or upon the Secured Obligations. No sale of the Trust Property without satisfaction in full of the Secured Obligations, and no forbearance on the part of Beneficiary, and no extension of the time for payment or performance of the Secured Obligations given by Beneficiary shall operate to release, discharge, modify, change or affect the liability of Trustor or the liability of any guarantors or sureties of Trustor, either in whole or in part.

3.14 Reconveyance. Upon Beneficiary's written request, and upon surrender to Trustee for cancellation of this Deed of Trust or a certified copy thereof and any note, instrument, or instruments setting forth all obligations secured hereby, Trustee shall reconvey, by execution, delivery, and recording of a Deed of Reconveyance, without warranty, the Trust

Property or that portion thereof then held hereunder. To the extent permitted by law, the reconveyance may describe the grantee as “the person or persons legally entitled thereto” and the recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Trust Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future rents, issues and profits of the Trust Property to the person or persons legally entitled thereto.

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

3.16 Right of Inspection. Beneficiary, its agents and employees, may enter the Trust Property at any reasonable time for the purpose of inspecting the Trust Property and Collateral and ascertaining Trustor’s compliance with the terms hereof.

3.17 Acceptance of Trust; Powers and Duties of Trustee.

(a) Trustee accepts this trust when this Deed of Trust is recorded. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust hereunder and the enforcement of the rights and remedies available hereunder, and may obtain orders or decrees directing or confirming or approving acts in the execution of said trust and the enforcement of said remedies.

(b) Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee’s opinion, such action would be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

(c) Except as set forth herein, with the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through Trustee’s agents or attorneys, (iii) to select and employ, in and about the execution of Trustee’s duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or

other expert, agent or attorney-in-fact, if selected with reasonable care, or 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 gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Trust Property for debts contracted for or liability or damages incurred in the management or operation of the Trust Property. 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 Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. **TRUSTOR WILL, FROM TIME TO TIME, PAY THE COMPENSATION DUE TO TRUSTEE HEREUNDER AND REIMBURSE TRUSTEE FOR, AND INDEMNIFY AND HOLD HARMLESS TRUSTEE AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY TRUSTEE IN THE PERFORMANCE OF TRUSTEE'S DUTIES.**

(d) 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 applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

(e) Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

(f) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee pursuant to the Loan Documents, including without limitation, any deed, conveyance, instrument, officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Trustee shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee.

3.18 Compensation; Exculpation; Indemnification.

(a) Trustor shall pay Trustee's fees and reimburse Trustee for reasonable expenses in the administration of this trust, including reasonable attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limit any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a

consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Trust Property or Collateral or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure (whether by malfeasance, nonfeasance or refusal to act) to lease the Trust Property after an Event of Default or from any other act or omission (regardless of whether same constitutes negligence) of Beneficiary in managing the Trust Property after an Event of Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

(b) TRUSTOR INDEMNIFIES TRUSTEE AND BENEFICIARY AGAINST, AND HOLDS TRUSTEE AND BENEFICIARY HARMLESS FROM, ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, COURT COSTS, REASONABLE ATTORNEYS' FEES AND OTHER LEGAL EXPENSES, COST OF EVIDENCE OF TITLE, COST OF EVIDENCE OF VALUE, AND OTHER EXPENSES WHICH EITHER MAY SUFFER OR INCUR: (i) BY REASON OF THIS DEED OF TRUST; (ii) BY REASON OF THE EXECUTION OF THIS DEED OF TRUST OR IN PERFORMANCE OF ANY ACT REQUIRED OR PERMITTED HEREUNDER OR BY LAW; (iii) AS A RESULT OF ANY FAILURE OF TRUSTOR TO PERFORM TRUSTOR'S OBLIGATIONS; OR (iv) BY REASON OF ANY ALLEGED OBLIGATION OR UNDERTAKING ON BENEFICIARY'S PART TO PERFORM OR DISCHARGE ANY OF THE REPRESENTATIONS, WARRANTIES, CONDITIONS, COVENANTS OR OTHER OBLIGATIONS CONTAINED IN ANY OTHER DOCUMENT RELATED TO THE TRUST PROPERTY, EXCEPT FOR THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BENEFICIARY OR TRUSTEE. THE ABOVE OBLIGATION OF TRUSTOR TO INDEMNIFY AND HOLD HARMLESS TRUSTEE AND BENEFICIARY SHALL SURVIVE THE RELEASE AND CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE AND RECONVEYANCE OR PARTIAL RELEASE AND RECONVEYANCE OF THIS DEED OF TRUST.

(c) Trustor shall pay all amounts and indebtedness arising under this Section 3.18 immediately upon demand by Trustee or Beneficiary together with interest thereon from the date the indebtedness arises at the rate of interest then applicable to the principal balance of the Loan as specified in the Loan Agreement.

3.19 SUBSTITUTION OF TRUSTEES. From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Trust Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 3.19 shall be conclusive proof of the proper substitution of such new Trustee, and such successor(s) Trustee shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

4. ASSIGNMENT OF LEASES AND RENTS.

4.1 Assignment. Trustor hereby irrevocably absolutely and unconditionally assigns and transfers to Beneficiary all of Trustor's right, title and interest in and to all Leases and Rents. The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment and not an assignment for security only, and Beneficiary's right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Property.

4.2 License. Beneficiary confers upon Trustor a license (the "**License**") to collect, receive, use and enjoy all Rents as trustee for the benefit of Beneficiary and to apply the amounts so collected first to the payment of the Secured Obligations that are then due and payable and then to the payment of all other sums due and payable hereunder, and thereafter, so long as no Event of Default has occurred, the balance may be distributed to Trustor. Upon the occurrence of an Event of Default, the License granted hereby shall cease and the license shall be revoked automatically and, pursuant to Section 6.2(b), Beneficiary shall have the sole right, with or without taking possession of the Property, to collect all Rents. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

4.3 Effect of Assignment. The foregoing irrevocable and absolute assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise by Beneficiary or Trustee, or any of their respective employees, agents, contractors or subcontractors, any of the rights remedies or powers granted to Beneficiary or Trustee hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

4.4 Representations and Warranties. Trustor represents and warrants that: (a) it has provided to Beneficiary a true, correct and complete list of all Leases, (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms subject to applicable laws affecting creditors' rights and principles of equity, (c) no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of Trustor or, to the best of Trustor's knowledge, any other party; (d) no rent or other payment under any existing Lease has been paid by any lessee

for more than one (1) month in advance; and (e) none of the lessor's interests under any of the Leases has been transferred or assigned.

4.5 Beneficiary's Right to Proceeds. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee), modification or amendment of any Lease shall be paid over to Beneficiary and applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.

5. SECURITY AGREEMENT AND FIXTURE FILING.

5.1 Security Interest. This Deed of Trust shall constitute a security agreement as that term is used in the Uniform Commercial Code of Utah, *Utah Code Annotated* Section 70A-1a-101 *et seq.* (the "UCC") and Trustor hereby grants and assigns to Beneficiary, as additional collateral for the Secured Obligations, a security interest in all of the property described in Section 1 which may be personal property (collectively, the "Collateral").

5.2 Representations and Warranties. Trustor represents and warrants that: (a) Trustor has good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; (c) Trustor's principal place of business is located at the address shown on the signature page hereto; and (d) Trustor's legal name is exactly as set forth on the first page of this Deed of Trust and all of Trustor's organizational documents or agreements delivered to Beneficiary are complete and accurate in every respect.

5.3 Covenants. Trustor agrees: (a) to execute and deliver such documents as Beneficiary deems necessary to create, perfect and continue the security interests contemplated hereby; (b) not to change its name, and as applicable, its chief executive office, its principal residence or the jurisdiction in which it is organized and/or registered without giving Beneficiary prior written notice thereof; (c) to cooperate with Beneficiary in perfecting all security interests granted herein and in obtaining such agreements from third parties as Beneficiary deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of its rights hereunder; and (d) that Beneficiary is authorized to file financing statements in the name of Trustor to perfect Beneficiary's security interest in Collateral.

5.4 Rights of Beneficiary. In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under UCC §70A-9a-620, or other applicable law.

5.5 Rights of Beneficiary upon Event of Default. Upon the occurrence of an Event of Default, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

(a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Trust Property or other place where any of the Collateral may be located and take possession of, collect, sell, lease, license and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales; and

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

(c) In disposing of Collateral hereunder, Beneficiary may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any disposition of any Collateral may be applied by Beneficiary to the payment of expenses incurred by Beneficiary in connection with the foregoing, including attorneys' fees, and the balance of such proceeds may be applied by Beneficiary toward the payment of the Secured Obligations in such order of application as Beneficiary may from time to time elect.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under UCC §9620, or other applicable law. Trustor agrees that Beneficiary shall have no obligation to process or prepare any Collateral for sale or other disposition.

5.6 Power of Attorney. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, during the continuance of an Event of Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

5.7 Possession and Use of Collateral. Except as otherwise provided in this Section or the other Loan Documents, so long as no Event of Default exists, Trustor may possess, use,

move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

5.8 Fixture Filing. This Deed of Trust constitutes a financing statement filed as a fixture filing pursuant to Section 9502(c) of the UCC, as amended or recodified from time to time, covering any portion of the Trust Property which now is or later may become a fixture attached to the Property or any Improvement. For purposes of this fixture filing, "Debtor" is Trustor and the "Secured Party" is Beneficiary. Trustor is the record owner of the Trust Property.

6. EVENTS OF DEFAULT AND REMEDIES.

6.1 Events of Default. Any of the following events shall, at Beneficiary's option, constitute an event of default (an "**Event of Default**") hereunder:

(a) Default under Loan Documents. To the extent not otherwise specified in this Section 6.1, the occurrence of any Event of Default (as defined in the Loan Agreement) under the Loan Agreement or any other instrument or agreement secured hereby (subject to applicable notice and cure rights);

(b) Failure to Perform Deed of Trust. The failure of Trustor to keep, observe and perform any non-monetary obligation under this Deed of Trust, and , except as set forth in (c) below, the continuation of such failure for a period of thirty (30) days after written notice from Beneficiary or within any longer grace period, if any, allowed in the Loan Documents for such failure, except that if such breach is not reasonably capable of being cured within such thirty (30) day period, then such thirty (30) day cure period shall be further extended as necessary to complete the cure (but in no event more than an additional ninety (90) days in the aggregate) so long as Trustor commences the cure within the original thirty (30) day period and thereafter diligently pursues such cure to completion;

(c) Specific Events of Default. A violation of any requirement or restriction of Section 3.1 (Title), 3.5 (Insurance), 3.6 (Condemnation), 3.7 (Taxes), or 3.11 (Due on Sale or Encumbrance).

6.2 Remedies. Upon the occurrence of any Event of Default, Trustee and Beneficiary shall each have all the following rights and remedies:

(a) Acceleration of Indebtedness. Declare all Secured Obligations, and the same shall thereupon become, immediately due and payable without any presentment, demand, protest or notice of any kind.

(b) Termination of License. Terminate Trustor's right and license to collect the Rents, and either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Property or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Property, or any part thereof or interest therein, make, modify, enforce, cancel or accept the surrender of any Lease, increase the income therefrom or

protect the security hereof and, with or without taking possession of the Trust Property, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, reasonable attorneys' fees, to the Secured Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Property, the collection of such Rents and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Property or the collection, receipt and application of Rents, Trustee, Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale. Failure of Beneficiary at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement of Beneficiary of the right to collect the same.

(c) Cure Breaches. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Event of Default of Trustor and, in connection therewith, to enter upon the Trust Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons.

(d) Entry. To enter upon, possess, manage and operate the Trust Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Trust Property, to make, terminate, enforce or modify Leases of the Trust Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Trust Property as necessary, in Trustee's or Beneficiary's sole judgment, to protect or enhance the security hereof.

(e) Appointment of Receiver. As a matter of strict right and without notice to Trustor or anyone claiming under Trustor, and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable or the filing of a notice of default, to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Property, and pursuant to the *Utah Code Annotated* § 78B-21-106(2)(b) and the Uniform Commercial Real Estate Receivership Act Trustor hereby unconditionally and irrevocably consents to such appointment and waives notice of any application therefor and consents to Beneficiary being appointed as such receiver if Beneficiary so elects. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Property or the date of expiration of any redemption period, unless such receivership is sooner terminated.

(f) Judicial Foreclosure of Deed of Trust. Commence and maintain any action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* Section 57-1-23, to specifically enforce any of the covenants hereof, or otherwise to enforce the same. Trustor agrees that the covenants of Trustor shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought by Beneficiary under this purpose, Trustor waives the defense of laches and any applicable statute of limitations. Beneficiary or any Bank may bid for and purchase any Trust Property at any sale by virtue of judicial proceedings or of a judgment or decree of foreclosure.

(g) Power of Sale. Deliver to Trustee a written declaration of default and demand for sale ("**Default Notice**"), and a written notice of default and election to cause Trustor's interest in the Trust Property or any portion thereof to be sold ("**Notice of Sale**"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of the County in which the Trust Property is located. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Default Notice and Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by *Utah Annotated Code* § 57-1-24 or other applicable law and after recordation of such Default Notice and Notice of Sale as then required by *Utah Annotated Code* § 57-1-25 and Section 57-1-26 or other applicable law, sell the Trust Property at the time and place of sale fixed by it in said Notice of Sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Annotated Code* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold) , at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Trust Property by public announcement at such time and place of sale, *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Annotated Code* § 57-1-27. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds, in accordance with *Utah Annotated Code* § 57-1-28, conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee, Beneficiary or any Bank, may purchase at such sale. In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(h) Multiple Foreclosures. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Trustee and Beneficiary, or either of them, determine their sole discretion.

(i) Waiver of Marshaling; Multiple Security. Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Trust Property and Collateral hereby waives all rights to have the Trust Property and Collateral and/or any other property, which is now or later may be security for any Secured Obligation (“**Other Property**”) marshaled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien or security interest against any security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Trust Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.

(j) Credit Bid. Upon sale of the Trust Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations in accordance with *Utah Annotated Code § 57-1-28(1)(b)*. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Trust Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Trust Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Trust Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Trust Property prior to resale, costs of resale (e.g., commissions, attorneys’ fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Trust Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Trust Property; (v) anticipated discounts upon resale of the Trust Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary’s credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary’s credit bid may be (at Beneficiary’s sole and absolute discretion) higher or lower than any appraised value of the Trust Property.

(k) Other Remedies. Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or provided by law.

6.3 Remedies Not Exclusive. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary, or to which either of them may

be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary.

6.4 Application of Foreclosure Sale Proceeds. After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest on the Loan specified in the Loan Agreement to be applicable on or after maturity or acceleration of the Loan; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

6.5 Application of Other Sums. All sums received by Beneficiary under Section 4.2 or any Section of this Article 6, less all costs and expenses incurred by Beneficiary or any receiver under any such section, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.

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

6.7 Payment of Costs, Expenses and Attorneys' Fees. Trustor agrees to pay to Beneficiary, immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to this Deed of Trust (including, without limitation, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest from the date of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Loan as specified in the Loan Agreement. In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any reasonable attorneys' fees.

6.8 Power to File Notices and Cure Defaults. Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance of a deed pursuant to the foreclosure of the lien of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with

respect to the Trust Property and Collateral, Leases, Rents and other proceeds of the Trust Property in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Trust Property and Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute an Event of Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act (whether or not such failure constitutes negligence) by Beneficiary under this Section.

6.9 Rescission of Notice. Beneficiary, from time to time before completion of a sale, may rescind any notice of breach or default and of election to cause the Trust Property to be sold by executing and delivering to Trustee a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demand for sale, and notices of breach or default, and of election to cause the Trust Property to be sold to satisfy the obligation hereof, nor otherwise affect any provision, agreement, covenant or condition of the Loan Documents or this Deed of Trust, or any of the rights, obligations or remedies of the parties hereunder or thereunder.

6.10 Tenancy at Will. In the event of a Trustee's sale hereunder and if at the time of such sale the Trustor occupies the portion of the Trust Property so sold, Trustor shall immediately become the tenant of the purchaser at such sale. Such tenancy shall be from day to day terminable at the will of either tenant or landlord and for reasonable rental per day based on the value of the portion of the Trust Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible entry and detainer shall lie if the tenant holds over after a demand in writing for possession of such Trust Property.

7. INTENTIONALLY OMITTED.

8. MISCELLANEOUS.

8.1 Additional Provisions. The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Trust Property and Collateral and such further rights and agreements are incorporated herein by this reference.

8.2 Governing Law. This Deed of Trust shall be construed in accordance with the laws of the State of Utah, except to the extent that federal laws preempt the laws of the State of Utah.

8.3 Severability. In the event any one or more of the provisions contained in this Deed of Trust, in the Note or in any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

8.4 Amendment. This Deed of Trust cannot be modified, waived, discharged or terminated orally, but only by a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

8.5 Waiver of Remedies. By accepting payment of any of the Secured Obligations after its due date, or an amount which is less than the amount then due, or the performance of any obligation required hereunder after the date required for such performance, Beneficiary shall not waive its rights either to require prompt payment or performance when due of all other Secured Obligations, or to declare a default as herein provided for the failure to so pay or perform.

8.6 No Implied Waiver. No waiver by Beneficiary of any default or breach by Trustor hereunder shall be implied from any omission by Beneficiary to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default identified in the waiver and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by Beneficiary to or of any act by Trustor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. No delay or omission of Trustee or Beneficiary in the exercising of any right or remedy available upon an Event of Default shall impair such right or remedy or any other right or remedy nor shall the same be construed to be a waiver of any Event of Default or any acquiescence therein, and no custom or practice which may develop between Trustor and Beneficiary during the term hereof shall be deemed a waiver of or any way affect the right of Beneficiary to insist upon the performance by Trustor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

8.7 Notices. All notices, demands or other communication required or allowed to be given hereunder to either party shall be given in writing (at the address set forth below their respective signatures below) by any of the following means: (a) personal service; (b) expedited prepaid delivery service, either commercial or United States postal Service, with proof of attempted delivery; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Any such communication, notice or demand shall be deemed to have been given: (i) in the case of personal delivery, at the time of delivery; (ii) in the case of expedited prepaid delivery and facsimile, upon the first attempted delivery on a Business Day; and (iii) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day. It is understood and agreed that each of the parties will use reasonable efforts to send copies of any notices marked "With a copy to"; provided, however, that failure to deliver such copy or copies shall have no consequences whatsoever to the effectiveness of any notice made to the other party. Any party hereto may change its address for notices and other communications hereunder by notice to the other parties hereto.

8.8 Successors and Assigns. This Deed of Trust, together with the covenants and warranties herein contained, shall inure to the benefit of Beneficiary to any lender participating in the Note, and to any subsequent holder of the Note and each of their respective successors and assigns, and shall be binding upon Trustor, its heirs, personal representatives, successors and assigns; provided, however, that this Section 8.8 does not waive or modify the provisions of Section 3.11.

8.9 Interpretation. In this Deed of Trust, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. The word "include(s)" means "include(s) without limitation," and the word "including" means "including, but not limited to." The term "Trust Property" and "Collateral" means all and any part of the Trust Property and Collateral, respectively, and any interest in the Trust Property and Collateral, respectively. No listing of specific instances, items or matters shall in any way limit the scope or generality of any language in this Deed of Trust.

8.10 Joint and Several Liability. If more than one person has executed this Deed of Trust as "Trustor", all obligations of each Trustor hereunder shall be joint and several.

8.11 Headings. Headings are for convenience only and are not intended as a limitation on the content of the paragraph following or as an aid to the construction thereof.

8.12 Waiver. To the fullest extent permitted by law, Trustor waives (a) the pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust, and (b) any right to offset any obligations owing by Beneficiary to Trustor or any Trustor funds held by Beneficiary against any obligation or payment due by Trustor or other person obligated to Beneficiary.

8.13 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Trust Property unless Beneficiary consents to such merger in writing.

8.14 Request for Notice. Trustor hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth below or at such other address as Trustor may designate pursuant to Section 8.7. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address given below is the address for Beneficiary as secured party under the UCC.

8.15 Recourse to Separate Property. Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment which Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution upon that person's separate property, and that person's interest in any community property.

8.16 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TRUSTOR AND BENEFICIARY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS,

OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. TRUSTOR AND BENEFICIARY AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS.

8.17 No Oral Agreements. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR AND ANY GUARANTOR ARE HEREBY NOTIFIED THAT THIS DEED OF TRUST AND THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. This Deed of Trust and the Loan Documents embody the entire agreement between the parties and supersede all prior proposals, agreements and understandings relating to the subject matter hereof.

8.18 Exhibits. Exhibit A attached hereto is expressly incorporated herein by this reference as though fully set forth herein.

8.19 Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

8.20 Acknowledgement Regarding Any Supported QFCs. Section 17.35 of the Loan Agreement is hereby incorporated by reference in this Deed of Trust.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be executed as of the day and year first above written.

NOTICES TO TRUSTOR – ADDRESS:

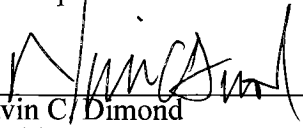
Andromeda Hospitality Group, Inc.
4949 S. Niagara St, Suite 300
Denver, CO 80237
Attn: Navin C. Dimond

NOTICES TO BENEFICIARY – ADDRESS:

Bank of the West
1625 W. Fountainhead Parkway
Tempe, AZ 85282
Attn: Donna Bowen

TRUSTOR:

ANDROMEDA HOSPITALITY GROUP,
INC.,
a Colorado corporation

By: 
Name: Navin C. Dimond
Title: President

NOTICES TO TRUSTEE – ADDRESS:

Fidelity National Title Agency of Utah, LLC
8955 E. Tufts Avenue, Suite 900
Denver, CO 80237
Attn: Stephen Boyka

NOTARY ACKNOWLEDGMENT

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

State of Colorado
County of Denver }

On November 2nd 2021 before me Olga Chesnokova a notary public
personally appeared Navinc. Dimond - President

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

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

WITNESS my hand and official seal.

OLGA CHESNOKOVA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144022357
MY COMMISSION EXPIRES JUNE 4, 2022

Place Notary Seal Above


Signature 
Signature of Notary Public

EXHIBIT A

DESCRIPTION OF PROPERTY

THIS EXHIBIT A IS ATTACHED TO THAT CERTAIN DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING DATED NOVEMBER 1, 2021 EXECUTED BY ANDROMEDA HOSPITALITY GROUP, INC., A COLORADO CORPORATION AS TRUSTOR, AS AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME.

PARCEL 1:

Part of Lot 7, Block 25, Plat "A", of Ogden City Survey: Beginning at the Northeast corner of Lot 7 and running
thence South 101 feet; thence West 122 feet; thence North 101 feet; thence East 122 feet to the
place of
beginning.

PARCEL 2:

A non-exclusive right of way in common with others over the following described property:
Beginning at a point 101 feet South and 122 feet West from the Northeast corner of said Lot 7
and running thence
West 43 feet; thence North 12 feet; thence East 43 feet; thence South 12 feet to the beginning.