

43-1 This document prepared by;
After recording return to:

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APN: 16-06-354-018

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12/18/2015 02:00 PM \$95.00
Book - 10388 Pg - 9326-9368
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: TWP, DEPUTY - WI 43 P.

**DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT, AND FIXTURE FILING
(PROJECT COMMONLY KNOWN AS "616 LOFTS APARTMENTS")**

**NOTICE TO RECORDER: THIS DOCUMENT CONTAINS A FIXTURE
FILING AND SHOULD BE FILED AND INDEXED IN THE REAL ESTATE
RECORDS NOT ONLY AS A DEED OF TRUST, BUT ALSO AS A FIXTURE
FILING.**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT, AND FIXTURE FILING (this "Deed of Trust") is made as
of December 17, 2015, by **616 SOUTH HOLDINGS, LP**, a Utah limited partnership,
("Trustor"), whose address is 229 S. Main St., Suite 2400, Salt Lake City, Utah 84111,
in favor of Landmark Title Company, a Utah corporation, and its successors and assigns
("Trustee") whose address is 675 E. 2100 S., Suite 200, Salt Lake City, UT 84106, for
the benefit of **UTAH HOUSING CORPORATION**, an independent body politic and
corporate constituting a public corporation, organized under the laws of the State of Utah,
its successors and assigns, ("Beneficiary") whose address is 2479 Lake Park Blvd., West
Valley City, Utah 84120.

**Notice to Trustor: The Note secured by this Deed of Trust may contain provisions
for a variable interest rate.**

1. Grant and Secured Obligations.

1.1 Grant. For the purpose of securing payment and performance of the
Secured Obligations defined and described in **Section 1.2** below, Trustor hereby
irrevocably and unconditionally grants, bargains, sells, conveys, transfers and assigns to
Trustee in trust, with power of sale and with right of entry and possession, all estate,
right, title and interest that Trustor now has or may later acquire in and to the following

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property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "**Property**");

1.1.1 The real property located in the County of Salt Lake, State of Utah, as described in EXHIBIT A attached hereto, together with all existing and future easements and rights affording access to it (the "**Premises**"); together with

1.1.2 All buildings, structures and improvements now located or later to be constructed on the Premises (the "**Improvements**"); together with

1.1.3 All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulfur, nitrogen, carbon dioxide, helium and other commercially valuable substances that may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights, or water stock appurtenant to the Premises (whether riparian, appropriative or otherwise), and any portion of the Premises lying in the streets, roads or avenues currently existing or later constructed; together with

1.1.4 All existing and future leases, subleases, subtenancies, licenses, rental agreements, occupancy agreements, and concessions relating to the use and enjoyment of or affecting all or any part of the Premises or Improvements, and any and all guaranties, extensions, renewals, replacements and modifications thereof, and all other agreements relating to or made in connection therewith (collectively, the "**Leases**"); together with

1.1.5 All real property and improvements on such real property, and all appurtenances and other property and interests of any kind or character, whether described in EXHIBIT A or not that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

1.1.6 All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises or Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

1.1.7 All building materials, equipment, work in process and other personal property of any kind, whether stored on the Premises or elsewhere, that

have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

1.1.8 All of Trustor's interest in and to the Project Loan funds, whether disbursed or not, all reserves set forth in the Cost Breakdown, all reserve accounts, as defined or set forth in the Loan Agreement identified below; together with

1.1.9 All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), that arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally; together with

1.1.10 All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

1.1.11 All of Trustor's right, title and interest in and to any and all units, declarant rights, and any other rights relating to the Premises or Improvements, whether now existing or subsequently arising, under any covenants, conditions, or restrictions affecting the Premises or laws now existing or subsequently arising relating to condominiums; together with

1.1.12 All of Trustor's right, title and interest in and to any swap transaction or interest rate agreement or interest rate hedging program through the purchase by Trustor from Beneficiary of an interest rate swap, cap, or such other interest rate protection product (an agreement evidencing any such arrangement, an **"Interest Rate Agreement"**), all whether now or hereafter entered into by Trustor with respect to the Loan, including, without limitation, any and all amounts payable to Trustor, any deposit account or accounts with Beneficiary in

the name of Trustor for deposit of payments to Trustor in connection with any Interest Rate Agreement or swap transaction, and any and all funds now or hereafter on deposit therein; together with

1.1.13 All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("**Books and Records**"); together with

1.1.14 All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to below and Funding Loan Agreement of even date herewith between Beneficiary, BOKF, NA, and The Bank of New York Mellon Trust Company, N.A.

For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreements or other Loan Documents shall constitute a part of and be entitled to the benefits of Lender's Deed of Trust lien upon the Property, and (ii) Trustor may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of either Note in its sole discretion, and in either case Beneficiary may include all such amounts in any credit which lender may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

1.2 Secured Obligations.

1.2.1 Trustor makes the grant, conveyance, assignment, and transfer set forth above, and grants the security interests set forth below for the purpose of securing the following obligations (the "**Secured Obligations**") in any order of priority that Beneficiary may choose:

(a) Payment of all obligations at any time owing under that certain Multifamily Note (the "**Note**") bearing even date herewith, payable by Trustor as maker in the stated principal amount of **Twenty Five Million Three Hundred Seventy Five Thousand and No/100 Dollars (\$25,375,000.00)** to the order of Beneficiary; and

(b) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(c) Payment and performance of all obligations of Trustor under that certain Project Loan Agreement bearing even date herewith between Trustor as Borrower and Beneficiary as Lender (the "**Loan Agreement**"); and

(d) Payment and performance of any obligations of Trustor under any documents executed in connection with or evidencing the Project Loan (the "**Loan Documents**"); and

(e) Payment and performance of all obligations of Trustor arising from any Interest Rate Agreements, including, without limitation, any Cash Settlement Amount or any payments on Early Termination payable by Trustor under any Swap Transaction or Confirmation. Capitalized terms used in this subsection (e) not otherwise defined in this Deed of Trust are defined in the *2006 ISDA Definitions* published by the International Swap Dealers Association, Inc.; and

(f) Payment and performance of all future advances and other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(g) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

1.2.2 All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations, the terms and conditions of which are incorporated herein by this reference, and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement that permit borrowing, repayment and reborrowing, or that provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Leases and Rents.

2.1 Assignment. Trustor hereby irrevocably, absolutely, presently and unconditionally transfers, sells, assigns, pledges and conveys to Beneficiary all of the right, title and interest of Trustor in and to (a) the Leases; and (b) all issues, profits, security or other deposits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property, including, without limitation, minimum rents,

additional rents, termination payments, bankruptcy claims, forfeited security deposits, damages following default and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability due to destruction or damage to the Property; together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due; together with any award or other payment that Trustor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving any tenant under the Leases; together with any and all payments made by or on behalf of any tenant of any part of the Property in lieu of rent; together with all rights and claims of any kind that Trustor may have against any tenant, lessee or licensee under the Leases or against any other occupant of the Premises or Improvements (some or all collectively, as the context may require, "Rents"). This is a present and absolute assignment of the Leases and Rents, not an assignment for security only.

2.2 Grant of License. Beneficiary hereby confers upon Trustor a license ("License") to retain possession of the Leases and collect and retain the Rents as they become due and payable, unless or until the occurrence of an Event of Default (defined below). Upon the occurrence of an Event of Default, the License shall automatically terminate without notice to Trustor, and Beneficiary may thereafter, without taking possession of the Property, take possession of the Leases and collect the Rents. Beneficiary and Trustor agree that the mere recordation of this Deed of Trust entitles Beneficiary immediately to collect and receive Rents upon the occurrence of an Event of Default, as defined in Section 6.2 below, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Trustor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver.

2.3 Collection and Application of Rents.

2.3.1 Right to Collect; Attorney-in-Fact. Subject to the License granted to Trustor above, Beneficiary has the right, power and authority to collect any and all Rents. Trustor hereby appoints Beneficiary its attorney-in-fact, coupled with an interest, to, at such times as Beneficiary in its sole discretion may so choose, (i) demand, receive and enforce payment of any and all Rents, including past due and unpaid Rents; (ii) give receipts, releases and satisfactions for any and all Rents; (iii) sue either in the name of Trustor or in the name of Beneficiary for any and all Rents; (iv) perform any obligation, covenant or agreement of Trustor under any of the Leases, and, in exercising any of such obligations, pay all necessary costs and expenses, employ counsel and incur and pay attorneys' fees; (v) delegate any and all rights and powers given to Beneficiary by this assignment of Leases and Rents; (vi) appear in any bankruptcy, insolvency or reorganization proceeding involving any tenant under the Leases and to collect any award or payment due Trustor pursuant to any such

proceeding; and/or (vii) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of this assignment of Leases and Rents. All such actions shall be taken at the expense of Trustor, who agrees to reimburse Beneficiary, upon demand, for all amounts expended, including reasonable attorneys' fees, together with interest thereon from the date of expenditure at the Default Rate applicable to the Loan, and shall be secured by this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all awards or payments received by Beneficiary under (vi) of this Section shall be applied to the Secured Obligations in such order as Beneficiary may elect in its sole discretion.

2.3.2 Trustor as Trustee. From and after the occurrence of an Event of Default, Trustor shall be the agent of Beneficiary in collection of the Rents, and any Rents so collected by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary, and Trustor shall, within three (3) business days after receipt of any Rents, pay the same to Beneficiary to be applied by Beneficiary as set forth below for the Application of Rents and Other Sums.

2.3.3 Possession of Property Not Required. Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as otherwise permitted by this Deed of Trust. In Beneficiary's sole discretion, after the occurrence of an Event of Default Beneficiary may choose to collect Rents either with or without taking possession of the Property. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every other right and remedy afforded any of them under this Deed of Trust and at law and in equity.

2.3.4 Application of Rents. Beneficiary shall apply all Rents collected by it in the manner provided below for the Application of Rents and Other Sums.

2.4 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Premises and Improvements, unless Beneficiary agrees in writing to the contrary, Beneficiary is not and shall not be deemed to be:

2.4.1 Responsible for the control, care, management or repair of the Property;

2.4.2 A "mortgagee in possession" for any purpose;

2.4.3 Responsible for performing any of the obligations of the lessor under any Lease;

2.4.4 Responsible for any waste committed by tenants lessees, licenses or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property;

2.4.5 Responsible for any loss sustained by Trustor resulting from Beneficiary's failure to let the Premises or Improvements or from any other act or omission of Beneficiary in managing the Property or administering the Leases; or

2.4.6 Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 Consent to Payment of Rents Directly to Beneficiary. At any time, after the occurrence and continuance of an Event of Default, Beneficiary may, at its option, notify any tenant or other parties of the existence of this assignment of Leases and Rents. Trustor hereby specifically authorizes, instructs and directs each and every present and future tenant, lessee and licensee of all or any part of the Premises or Improvements to pay all unpaid and future Rents to Beneficiary upon receipt of demand from Beneficiary to so pay the same, and Trustor hereby agrees that each such present and future tenant, lessee and licensee may rely upon such written demand from Beneficiary to so pay the Rents without any inquiry into whether there exists an Event of Default hereunder or under the other Loan Documents or whether Beneficiary is otherwise entitled to the Rents. Trustor hereby waives any right, claim or demand that Trustor may now or hereafter have against any present or future tenant, lessee or licensee by reason of such payment of Rents to Beneficiary, and any such payment shall discharge such tenant's, lessee's or licensee's obligation to make such payment to Trustor.

2.6 Leasing. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Trustor shall not modify, amend, or terminate a Lease existing at any time, except strictly in accordance with the terms of the Loan Agreement or in the ordinary course of business of Trustor. Trustor shall comply with and observe Trustor's obligations as landlord or as tenant, as the case may be, in all material respects, under any Leases. Unless otherwise directed by Beneficiary, all Leases made after the date hereof shall specifically provide that such Leases are subordinate to this Deed of Trust; that the tenant attorns to Beneficiary, such attornment to be effective upon Beneficiary's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Beneficiary may from time to time request; and that the attornment of the tenant shall not be terminated by foreclosure. Trustor shall not request or consent to the subordination of any Lease to any lien subordinate to this Deed of Trust. If Trustor becomes aware that any tenant proposes to do, or is doing, any act or thing that may give rise to any right to set-off against rent, Trustor shall (a) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off

against rent, (b) notify Beneficiary thereof and of the amount of said set-offs, and (c) within twenty (20) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

2.7 Further Actions. Trustor shall observe, perform, and discharge duly and punctually all material obligations, terms, covenants, conditions, and warranties to be performed by Trustor pursuant to the Leases. Trustor agrees to execute and deliver, at its sole cost and expense, upon Beneficiary's written request, any documents necessary to cause the specific assignment of any particular Lease or any other document or instrument, the assignment of which is necessary, proper or desirable in Beneficiary's reasonable judgment to carry out the purposes of this assignment of Leases and Rents, including, without limitation, any consents to this assignment of Leases and Rents. In addition, Trustor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or any tenant thereunder, and shall pay on demand all costs and expenses, including, without limitation, reasonable attorneys' fees that Beneficiary may incur in connection with Beneficiary's appearance, voluntary or otherwise in any such action or proceeding, together with interest thereon at the Default Rate from the date that is thirty (30) days from the date incurred by Beneficiary until repaid by Trustor.

2.8 Rights of Beneficiary. Termination of the License shall be without prejudice to Beneficiary. The rights of Beneficiary under this Section and elsewhere in this Deed of Trust are cumulative and concurrent, may be pursued separately, successively or together, and may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise of any one or more of the rights provided for herein shall not be construed as a waiver of any of the other rights or remedies of Beneficiary, at law or in equity or otherwise, so long as any Secured Obligation remains unsatisfied.

2.9 Uniform Assignment of Rents Act. This **Section 2** is subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et seq. (the "*Act*"), and in the event of any conflict or inconsistency between the provisions of this Article 2 and the provisions of the Act, the provisions of the Act shall control and Beneficiary shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Leases and Rents, all in favor of Beneficiary. The parties acknowledge that some of the Property and some or all of the

Leases and Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Leases or Rents may be or be determined to be personal property, Trustor, as debtor, hereby grants Beneficiary and Trustee, as secured parties, a security interest in all such Property and the Leases and Rents, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the state in which the Property is located, covering all such Property and the Leases and Rents.

3.2 Financing Statements.

3.2.1 Trustor shall pay all fees and costs that Beneficiary may incur in filing one or more financing statements and such other documents as Beneficiary may from time to time reasonably require to perfect or continue the perfection of Beneficiary's security interest in any Property or the Leases or Rents and in obtaining such record searches as Beneficiary may reasonably require. Trustor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf and authorizes Beneficiary to file one or more financing statements, continuation statements, financing statement amendments, and such other documents as Beneficiary may from time to time reasonably require to perfect and continue the perfection of Beneficiary's security interest in any part of the Property. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

3.2.2 Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file or record any initial financing statements and amendments thereto that (a) indicate the Property and the Leases and Rents(i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Property falls within the scope of UCC Article 9a, or (ii) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by Part 5 of UCC Article 9a, for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (2) in the case of a financing statement filed as a fixture filing or indicating Property and the Leases and Rents as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Property relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement until all obligations under this Deed of Trust have been fully and finally satisfied or without the prior written

consent of Beneficiary, subject to Trustor's rights under UCC Section 9a-509(4)(b).

4. Fixture Filing.

This Deed of Trust constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State and county in which the Property is located, as amended or recodified from time to time, covering any Property that now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Trustor, as debtor, and Beneficiary and Trustee, as secured parties, are as set forth in the preambles of this Deed of Trust.

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Trustor represents, warrants, and covenants that:

5.1.1 Trustor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

5.1.2 Trustor has or will have good title to all Property;

5.1.3 True, correct and complete copies of the Leases existing and in effect as of the date hereof have been delivered to Beneficiary, including all amendments, modifications, exhibits and addenda thereto;

5.1.4 Trustor has the full and unlimited power, right and authority to encumber the Property and assign the Leases and Rents, there are no outstanding assignments of the Leases and Rents, Trustor is the absolute owner of the landlord's interest in the Leases, and Trustor has performed no act or executed any other instrument that might prevent Beneficiary from enjoying and exercising any of its rights and privileges evidenced by this Deed of Trust with respect to the Leases and Rents;

5.1.5 No Rents have been materially discounted, released, waived, compromised or otherwise discharged except for prepayment of Rent of not more than three (3) months prior to the accrual thereof;

5.1.6 No material default exists under any of the Leases by any party and no fact or circumstance exists under any of the Leases that, with the lapse of time or giving of notice or both, would constitute a material default by any party under such Leases;

5.1.7 The Leases were duly executed, are in full force and effect, and are the valid and binding obligations of Trustor, and, to the knowledge of Trustor, are the valid and binding obligations of the other parties thereto, and are enforceable in accordance with their respective terms subject to the effect of applicable bankruptcy, insolvency, receivership, reorganization, moratorium, and other similar laws affecting the rights and remedies of creditors generally, the general principles of equity (whether applied at law or in equity), and public policy;

5.1.8 Trustor has and shall punctually observe and perform all material covenants, conditions and agreements in the Leases to be performed by Trustor;

5.1.9 To Trustor's knowledge, this Deed of Trust creates a first and prior lien on the Property;

5.1.10 The Property includes all property and rights that may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

5.1.11 Trustor owns any Property that is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

5.1.12 Trustor's place of business, or its chief executive office if it has more than one place of business, is located at the address set forth in the preambles to this Deed of Trust.

5.2 Taxes and Assessments. Subject to Trustor's right to contest, Trustor shall pay, prior to delinquency, all taxes, levies, charges and assessments against the Property in accordance with the Loan Agreement.

5.3 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Use of Property. Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Trustor shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed or as otherwise set forth in the Loan Agreement. Trustor shall not initiate or acquiesce in a change in the zoning classification of the Property without Beneficiary's prior written consent. Trustor shall not consent to the submission of the Property, or any portion thereof, to any condominium regime.

5.5 Liens, Charges and Encumbrances.

5.5.1 Subject to Trustor's right to contest, Trustor shall pay all water and sewer rates, rents, taxes, assessments, premiums, charges and impositions, attributable to the Property. Trustor shall immediately discharge any lien on the Property that Beneficiary has not consented to in writing or that is not otherwise permitted in accordance with the terms of the Loan Agreement (a "**Permitted Encumbrance**"). If a mechanic's lien is filed against the Property, Trustor shall promptly notify Beneficiary and, at Beneficiary's request, shall, at Trustor's option, either (i) escrow with Beneficiary or, with the consent of Beneficiary, deposit in a court of competent jurisdiction a sum of money equal to one and one half times the amount of the lien, or (ii) take such actions as the Title Insurer as it may require to induce the Title Insurer to issue an endorsement to the Title Policy insuring against all such liens. Without Beneficiary's prior written consent, Trustor shall not allow any lien, encumbrance, or other interest in the Property to be perfected against the Property, other than Permitted Encumbrances, unless Trustor is then diligently contesting the same and has, as to the lien, encumbrance or interest being contested, complied with (i) or (ii) of the preceding sentence.

5.5.2 Trustor shall timely comply with all requirements of Title 38 Chapter 1a of *Utah Code Annotated* with regard to filings and notices. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Property in the State Construction Registry in accordance with *Utah Code Annotated* § 38-1a-201.

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

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

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

5.5.6 Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of Mortgagee's Title Insurance Policy.

5.5.7 Subject to Trustor's right to contest, Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property, or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by *Utah Code Annotated* § 38-1a-804 and otherwise complies with the requirements of *Utah Code Annotated* § 38-1a-804 to release the Property from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with *Utah Code Annotated* § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion, but not more than one hundred fifty percent (150.0%) of the amount of the claim, and provided further that if Trustor loses such contest or if foreclosure of such lien is commenced by the lienholder, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be

removed and discharged, or Beneficiary may do so using any cash deposited in a Beneficiary-controlled account.

5.5.8 Notwithstanding the foregoing or anything else contained in this Agreement which may be construed to the contrary, in the event that any action or other proceeding is instituted to enforce or foreclose any Lien against any of the Property, the Trustor shall immediately (and in any event within three days of request by Beneficiary, or five days prior to any scheduled foreclosure sale, whichever is sooner) make such payments, obtain such surety bonds and/or take such other action as the Beneficiary may, in its sole discretion, require in order to release the Lien. If Trustor fails to remove and discharge any such Lien as required above, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but is not obligated to, discharge the same, either by paying the amount claimed to be due, providing alternate security in the manner set forth above, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such Lien together with interest thereon from the date of such expenditure at the Default Rate.

5.6 Maintenance of Insurance.

5.6.1 Trustor shall maintain in full force and effect (i) casualty insurance on all real and personal property included in the Property on an all-risks basis (including the perils of flood and quake) covering the repair and replacement cost of all such property, (ii) insurance coverage for business interruption and public liability insurance (including products/completed operations liability coverage), in each case of the kinds customarily carried or maintained by persons of established reputation engaged in similar businesses and in amounts and with deductibles acceptable to the Lender, and (iii) such other insurance coverage in such amounts and with respect to such risks as the Beneficiary may reasonably request. All such insurance shall be provided by financially sound and reputable insurance companies not affiliates of the Trustor and having a minimum A.M. Best rating of A, size category VII. On or prior to the date of this Deed of Trust, and at all times thereafter, the Trustor will cause the Beneficiary to be named as an additional insured, assignee and loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Deed of Trust pursuant to endorsements in form and content acceptable to the Beneficiary. The Trustor will deliver to the Beneficiary (i) on or before the date of this Deed of Trust, a certificate from the Trustor's insurance broker dated such date showing the amount of coverage as of such date, and that such policies will

include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of the Lender from time to time full information as to the insurance carried, (iii) within five days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Deed of Trust, and (iv) immediately, notice of any cancellation or nonrenewal of coverage by the Trustor.

5.6.2 In the event the Trustor fails to provide the Beneficiary with evidence of the insurance coverage required by this Deed of Trust, the Beneficiary may purchase insurance at the Trustor's expense to protect the Beneficiary's interest in the Property. The coverage purchased by the Beneficiary may, but need not, protect the Trustor's interests. The Trustor may later cancel any insurance purchased by the Beneficiary, but only after providing the Beneficiary with evidence that Trustor has obtained insurance as required by this Deed of Trust. If Beneficiary purchases insurance for the Property, to the fullest extent provided by law, the Trustor will be responsible for the costs of that insurance, including interest and other charges imposed by the Beneficiary in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Secured Obligations. The Trustor acknowledges that the costs of insurance purchased by the Beneficiary may be more than the cost of insurance that the Trustor would be able to obtain on its own.

5.6.3 Trustor shall furnish to Beneficiary, upon request of Beneficiary, reports on each existing insurance policy showing such information as Beneficiary may reasonably request, including without limitation the following: (a) the name of the insurer; (b) the risks insured; (c) the amount of the policy; (d) the properties insured; (e) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (f) the expiration date of the policy. In addition, upon request of Beneficiary (however not more often than annually), Trustor will have an independent appraiser satisfactory to Beneficiary determine, as applicable, the actual cash value or replacement cost of any Property. The cost of such appraisal shall be paid by Trustor.

5.6.4 In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Trustor in and to all policies of insurance required hereunder shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Property, to the extent such policies are assignable pursuant to the terms thereof.

5.7 Damages and Insurance and Condemnation Proceeds.

5.7.1 Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Property, or any part thereof, whether or not covered by insurance. All proceeds of insurance shall be payable to Beneficiary, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, Trustor shall promptly pay over such proceeds to Beneficiary. All proceeds of insurance will be applied by Beneficiary to payment of the Secured Obligations in such order as Beneficiary shall determine.

5.7.2 In the event that any proceeding or action be commenced for the taking of the Property, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a “**Taking**”), or if the same be taken or damaged by reason of any public improvement or Taking, or should Trustor receive any notice or other information regarding such Taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the “**Condemnation Proceeds**”) are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. If Trustor receives any Condemnation Proceeds Trustor shall promptly pay over such proceeds to Beneficiary. Beneficiary is hereby authorized and empowered by Trustor, at Beneficiary’s option and in Beneficiary’s sole discretion, as attorney-in-fact for Trustor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

5.8 Maintenance and Preservation of Property.

5.8.1 Trustor shall insure the Property as required by the Loan Agreement and keep the Property, including improvements, fixtures, equipment, machinery and appliances, in good repair, normal wear and tear excepted, and shall replace improvements, fixtures, equipment, machinery and appliances on the Property owned by Trustor when necessary to keep such items in good repair in good condition and repair, normal wear and tear excepted.

5.8.2 Neither Trustor nor any tenant shall remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other land use classification that affects the Property or any part of it, except as permitted or required by the Loan Agreement to develop the Project or with Beneficiary's express prior written consent in each instance.

5.8.3 If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices.

5.8.4 Trustor shall not commit or allow any act upon or use of the Property that would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen, including, without limitation, the Americans with Disabilities Act; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on the Property if doing so could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Agreement.

5.8.5 Trustor shall not commit waste or permit impairment or deterioration of the Property (reasonable wear and tear excluded), including those acts or omissions characterized under the Loan Agreement as waste that arises out of Hazardous Material.

5.8.6 Trustor shall not abandon the Property.

5.8.7 Trustor shall give notice in writing to Beneficiary, appear in and defend any action or proceeding purporting to affect the Property, except for any such action or proceeding caused by the gross negligence or intentional misconduct of Beneficiary. Unless required by applicable law or unless Beneficiary has otherwise consented in writing, neither Trustor nor any tenant or other Person shall remove, demolish or alter any improvement now existing or

hereafter erected on the Property or any fixture (other than trade fixtures or in the ordinary course of Trustor's business), equipment, machinery or appliance in or on the Property owned by Trustor and used or intended to be used in connection with the Property.

5.8.8 Trustor shall perform all other acts that from the character or use of the Property may be reasonably necessary to maintain and preserve its value, ordinary wear and tear excepted.

5.9 Releases, Extensions, Modifications and Additional Security. From time to time, Beneficiary may perform any of the following acts without incurring any liability, giving notice to any person, or prejudicing its rights under this Deed of Trust:

5.9.1 Release any person liable for payment of any Secured Obligation;

5.9.2 Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;

5.9.3 Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;

5.9.4 Alter, substitute or release any property securing the Secured Obligations;

5.9.5 Consent to the making of any plat or map of the Property or any part of it;

5.9.6 Join in granting any easement or creating any restriction affecting the Property;

5.9.7 Join in any subordination or other agreement affecting this Deed of Trust or the lien of it;

5.9.8 Apply any other security for the Secured Obligations held by Beneficiary; or

5.9.9 Release the Property or any part of it.

5.10 Protection of Beneficiary's Security.

5.10.1 If Trustor fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced that affects the Property or title thereto or the interest of Beneficiary therein, including, but not limited to, eminent domain, insolvency, enforcement of local

laws, or arrangements or proceedings involving a bankrupt or decedent, then Beneficiary, at Beneficiary's option, may make such appearances, disburse such sums and take such action as Beneficiary deems necessary, in its sole discretion, to protect Beneficiary's interests, including, but not limited to, (a) disbursement of attorneys' fees; (b) entry upon the Property to remedy any failure of Trustor to perform hereunder; and (c) procurement of satisfactory insurance.

5.10.2 Any amounts disbursed by Beneficiary pursuant to this Section, with interest thereon, shall become part of the Secured Obligations and shall be secured by this Deed of Trust. Unless Trustor and Beneficiary agree in writing to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate applicable to the Loan. Trustor hereby covenants and agrees that Beneficiary shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Secured Obligations. Nothing contained in this Section shall require Beneficiary to incur any expense or take any action hereunder.

5.10.3 The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of the right of Beneficiary to accelerate the maturity of any of the Secured Obligations secured by this Deed of Trust. Beneficiary's receipt of any awards, proceeds or damages under the insurance or condemnation provisions of the Loan Agreement shall not operate to cure or waive any default in payment of sums secured by this Deed of Trust.

5.11 Release. When all of the Secured Obligations have been paid in full and all fees and other sums owed by Trustor under this Deed of Trust and the other Loan Documents have been received, Beneficiary shall request that Trustee reconvey this Deed of Trust and release the lien created thereby, and shall release all notes and instruments evidencing the Secured Obligations. Trustor shall pay any costs of preparation and recordation of such reconveyance and releases.

5.12 Compensation, Exculpation, Indemnification.

5.12.1 Trustor agrees to pay fees reasonable fees as may be charged by Beneficiary for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including, without limitation, their rights with respect to the Leases and Rents, and, including providing a statement of the Secured Obligations or releasing the lien of this Deed of Trust as provided above. Trustor shall also pay or reimburse all of Beneficiary's and Trustee's reasonable costs and expenses that may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all reasonable costs, expenses and other advances that may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under this Deed of Trust, whether

any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined below) and any cost of evidence of title. If Beneficiary and/or Trustee, as required by applicable law, chooses to dispose of Property through more than one Foreclosure Sale, Trustor shall pay all costs, expenses or other advances that may be incurred or made by Beneficiary and/or Trustee in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Trustee or Beneficiary under this Deed of Trust or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses that may be paid or incurred by or on behalf of Trustee and Beneficiary for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments, and all additional expenses incurred by Trustee and Beneficiary with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Trustee and Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale that may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature mentioned in this Section, and such expenses and fees as may be incurred in the protection of the Property, maintenance of the lien of this Deed of Trust, and administration of the Leases, including the fees of any attorney (including the costs and fees of paralegals) employed by Trustee or Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust and shall be deemed to be included in Beneficiary's lien on the Property for purposes of *Utah Code Annotated* § 57-1-28.

5.12.2 Neither Beneficiary nor Trustee shall be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

- (a) Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee in this Deed of Trust;

(b) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; or

(c) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary or Trustee.

5.12.3 Trustor agrees to indemnify Beneficiary and Trustee against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses that they may suffer or incur:

(a) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(b) Arising out of or resulting from the assignment of Leases and Rents as set forth above, including, without limitation, claims or demands for security deposits from tenants deposited with Trustor, and from and against any and all claims and demands whatsoever that may be asserted against Beneficiary to satisfy any obligations of the landlord under the Leases;

(c) Because of any failure of Trustor to perform any of its obligations; or

(d) Because of any alleged obligation of or undertaking by Beneficiary and/or Trustee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

Such indemnity shall include, without limitation, all costs, expenses and reasonable attorneys' fees incurred by Beneficiary in connection with such matters, together with interest on the indemnified liabilities at the Default Rate from the date paid or incurred by Beneficiary until repaid by Trustor, and shall be immediately due and payable to Beneficiary by Trustor upon demand and shall be secured by this Deed of Trust. This agreement by Trustor to indemnify

Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust. The Beneficiary's gross negligence or willful misconduct shall not be covered by the Trustor's indemnification.

5.12.4 Trustor shall satisfy all obligations to pay money arising under this Deed of Trust within thirty (30) days of written demand by Beneficiary unless sooner required by the terms hereof. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from expiration of the foregoing thirty (30) day period, or such shorter applicable period, at the Default Rate.

5.13 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Trustor shall give Beneficiary prompt notice in writing if any claim is asserted that does or could affect any such matters, or if any action or proceeding is commenced that alleges or relates to any such claim.

5.14 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, that are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

5.15 Site Visits, Observation and Testing. Beneficiary and its agents and representatives shall have the right at any reasonable time during normal business hours upon three (3) days prior written notice to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives be a representation that Hazardous Material is or is not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation or testing by any of Beneficiary, its agents or representatives. Neither Beneficiary, nor its agents or representatives owe any duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Prior to an Event or Default, Beneficiary shall give Trustor at least 24 hours notice before entering the Property, and Beneficiary shall make reasonable efforts to avoid interfering

with Trustor's use of the Property in exercising any rights provided in this Section. Trustor shall bear all expense of any site visit, observation or testing. Beneficiary shall reimburse Trustor for the costs and expenses related to any mechanics' or materialmen's lien, damage, loss, cost or expense, including reasonable attorneys' fees, directly related to Beneficiary's gross negligence with respect to its rights with respect to its site visits, observation or testing on the Property.

5.16 Notice of Change. Trustor shall give Beneficiary prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Trustor's name or business structure. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all Books and Records will be located at Trustor's place of business or chief executive office if Trustor has more than one place of business.

5.17 Transfers. Trustor shall not assign or attempt to assign its rights under this Deed of Trust or any of the Loan Documents and any purported assignment shall be void. Without the prior written consent of Beneficiary, in Beneficiary's sole discretion, Trustor shall not suffer or permit (i) any change in the management (whether direct or indirect) of the Project, or (ii) the sale, transfer, conveyance, alienation, pledge, assignment, encumbrance, hypothecation or other disposition (a "**Transfer**") of (1) all or any portion of the Project or any portion of any other security for the Project Loan, (2) all or any portion of the Trustor's right, title and interest in and to the Project or any portion of any other security for the Project Loan, or (3) any interest in Trustor or any majority interest in any entity which holds an interest in, or directly or indirectly controls, Trustor. The foregoing shall not prohibit or require the consent of Beneficiary or (i) a Transfer of Trustor's general partner interest to any entity owned or controlled, directly or indirectly, by Wasatch Residential Group, LLC, (ii) a Transfer of Trustor's limited partnership interests to any entity affiliated with Goldman Sachs & Co., or owned or controlled, directly or indirectly, by Wasatch Residential Group, LLC, and (iii) any amendments of Trustor's Partnership Agreement to evidence such changes.

6. Accelerating Transfers, Default and Remedies.

6.1 Accelerating Transfers.

6.1.1 "Accelerating Transfer" means any Transfer not expressly permitted under this Deed of Trust.

6.1.2 Trustor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's

reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and the transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Beneficiary, in its sole discretion, may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by this Deed of Trust and any of the other Loan Documents.

6.2 Events of Default. Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (each an "Event of Default" and some or all, collectively, "Events of Default").

6.2.1 Failure of Trustor to perform or to observe any agreement, covenant, or condition required under this Deed of Trust, which failure is not cured within thirty (30) days after written notice from Beneficiary to Trustor.

6.2.2 An Event of Default occurs under the Loan Agreement or any other Loan Document.

6.2.3 Any representation, warranty, or statement made herein, in any other Loan Document, or any other material information furnished by Trustor to Beneficiary or any other holder of the Note, is determined by Beneficiary to have been false or misleading in any material respect at the time made.

6.3 Remedies. At any time after an Event of Default, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

6.3.1 Acceleration. Declare any or all of the Secured Obligations to be due and payable immediately.

6.3.2 Additional Advances. Terminate any commitment to make any additional advances under the Loan or any other loan secured by this Deed of Trust.

6.3.3 Receiver. Beneficiary shall, as a matter of right, without regard for the solvency or insolvency of Trustor or the then value of the Property, to the extent permitted by applicable law, be entitled, upon notice to Trustor, to apply to any court having jurisdiction to appoint a receiver for all or any part of the Property and the Leases and Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer. Such receiver shall have all

powers and duties prescribed by applicable law, all other powers that are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Beneficiary would have, upon entering and taking possession of the Property.

6.3.4 Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may, in its sole discretion, consider necessary and appropriate to protect the security of this Deed of Trust, including, without limitation, completing any unfinished construction and/or contracting for and making repairs, replacements and alterations to the Improvements and to the fixtures, equipment and personal property located in or on the Improvements or used in any way in the operation, use and occupancy of the Premises or Improvements. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Premises and make all of it available to Beneficiary at the site of the Premises. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

6.3.5 Cure; Protection of Security. Beneficiary may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things that it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien that in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary to be conclusive as among the parties to this Deed of Trust; entering into, enforcing, modifying or canceling Leases on such terms and conditions as Beneficiary may consider appropriate; evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Beneficiary from any tenants; employing necessary managers and other employees to administer the Leases; purchasing fuel and providing utilities; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; purchasing and paying for such additional furniture and equipment as in the sole subjective judgment of Beneficiary may be necessary to maintain a proper rental income from the Property; otherwise caring for and incurring expenses to protect any and all of the

Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Section either with or without giving notice to any person. Any amounts expended by Beneficiary under this Section shall be secured by this Deed of Trust.

6.3.6 Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

6.3.7 Foreclosure; Lawsuits. Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid shall be credited against the Secured Obligations. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default, Trustee or Beneficiary may also, at any time after the filing of a complaint to foreclose this Deed of Trust, request appointment of a receiver of the Property by the court in which such complaint is filed. Without limiting the foregoing:

(a) Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under *Utah Code Annotated* § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 6.3(b), or specifically enforce any of the covenants hereof.

(b) Beneficiary may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Property to be sold in accordance with *Utah Code Annotated* § 57-1-24 or other applicable law. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Property on the date and

at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; *provided, however*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale as set forth in **Section 7.5**.

6.3.8 Other Remedies. In addition to, but not in lieu of, any other rights and remedies hereunder, Beneficiary shall have the right to institute suit and obtain a protective or mandatory injunction against Trustor to prevent an Event of Default, as well as the right to damages occasioned by any Event of Default. Beneficiary may exercise all rights and remedies contained in this instrument (including, without limitation, all rights and remedies with respect to the assignments of Leases) or any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Trustor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto that may become effective from time to time after the date hereof.

6.3.9 Sale of Personal Property. Beneficiary and/or Trustee, as required by applicable law, shall have the discretionary right to cause some or all of the Property that constitutes personal property to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(a) For purposes of this power of sale, Beneficiary and/or Trustee, as required by applicable law, may elect to treat as personal property any Property that is intangible or that can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Beneficiary and/or Trustee, as required by applicable law, may dispose of any personal property in any manner permitted by Article 9 of the Uniform Commercial Code of the state in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(b) In connection with any sale or other disposition of such Property, Trustor agrees that the following procedures constitute a commercially reasonable sale: Beneficiary shall mail written notice of the sale to Trustor not later than thirty (30) days prior to such sale. Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding the foregoing, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

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

6.3.10 Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Beneficiary and/or Trustee, as required by applicable law, may:

(a) Designate the order in which the lots, parcels and/or items are to be sold or disposed of or offered for sale or disposition (subject to Trustor's right under *Utah Code Annotated* § 57-1-27 to direct the order in which such property shall be sold); and

(b) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "**Foreclosure Sale**"; and any two or more, "**Foreclosure Sales**").

If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property that has not been sold, until all of the Secured Obligations have been paid in full.

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

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

6.3.13 Deficiency. Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law. To the extent the Utah Deed of Trust Act, as now existing or hereafter amended, or other statute requires that the "fair market value" or "fair value" of the Property be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Secured Obligations, the term "fair market value" or "fair value" shall include those matters required by law and the additional factors set forth below:

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

(ii) An offset to the fair market value or fair value of the Property, as determined hereunder, shall be made by deducting from such

value the reasonable estimated closing costs related to the sale of the Property, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real property.

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

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

6.3.15 Request for Notice. Beneficiary hereby requests, pursuant to *Utah Code Annotated* § 57-1-26(3), a copy of any notice of default and that any notice of sale under any deed of trust or mortgage affecting the Property be mailed to it at the address set forth in the preamble hereof.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Trustor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such Property, Beneficiary may settle for the purchase price by crediting the sales price of the Property against the following obligations:

6.4.1 First, the portion of the Secured Obligations attributable to the reasonable expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary and Trustee under this Deed of Trust or any of the other Loan Documents; and

6.4.2 Second, all other Secured Obligations in any order and proportions as Beneficiary in its reasonable discretion may choose.

For purposes of *Utah Code Annotated* § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property, and (ii) Beneficiary may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of either Note in its reasonable discretion, and in either case

Beneficiary may include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the Subject Property pursuant to this Deed of Trust.

6.5 Application of Foreclosure Sale Proceeds. Beneficiary shall apply the proceeds of any Foreclosure Sale in the following manner unless otherwise required by *Utah Code Annotated* § 57-1-29:

6.5.1 First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under this Deed of Trust or any of the other Loan Documents;

6.5.2 Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust that then remain unpaid;

6.5.3 Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

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

6.6 Application of Rents and Other Sums. Except as otherwise set forth in this Deed of Trust, Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale that Beneficiary may receive or collect under this Deed of Trust, in the following manner:

6.6.1 First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver, including, without limitation, amounts expended for management, management fees for any management agent, repairs, upkeep, maintenance, service, fuel, utilities, taxes, assessments, insurance premiums, attorneys' fees, and such other expenses as Beneficiary incurs in connection with the operation of the Property;

6.6.2 Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

6.6.3 Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds, including, without limitation, Rents, that it does not actually receive.

7. The Trustee.

7.1 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions, subject to the limitations of *Utah Code Annotated* § 57-1-21.5: (i) to select, employ and consult 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, and Trustee shall not 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 that 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 Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. 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 rendering Trustee's services hereunder. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses that may be incurred by Trustee in the performance of Trustee's duties.

7.2 Retention of Money. 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, and shall be segregated from any other moneys of Trustee.

7.3 Successor Trustees. Trustee may resign by giving notice of resignation in writing to Beneficiary. If Trustee dies, resigns or becomes disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, prefers to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act

instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees in succession) who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation or other legal entity and such appointment is executed on its behalf by any officer, manager, member, or partner of such entity, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer, manager, or partner of the entity, shall be in such form as is required by applicable law and shall be recorded in each County in which any portion of the Property lies. Trustor hereby ratifies and confirms any and all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of their duties, rights, and obligations hereunder.

7.4 Perfection of Appointment. 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 Trustee or any substitute trustee such estates, rights, powers, and duties, then, upon request by 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.

7.5 Succession Instruments. Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of the substitute trustee's predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

7.6 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall 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 or Beneficiary.

7.7 Trustee's Fees. Trustor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel, including fees for accountings and reinstatement quotes as may be required by *Utah Code Annotated* § 57-1-31.5, in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

8. Miscellaneous Provisions.

8.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor that apply to this Deed of Trust and to the Property.

8.2 No Waiver or Cure.

8.2.1 Each waiver by Beneficiary must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary to take action on account of any default of Trustor. Consent by Beneficiary to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's consent to be obtained in any future or other instance.

8.2.2 If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(a) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided herein.

(b) Beneficiary exercises any of its rights under the assignment of Leases and Rents or collects and applies Rents as permitted hereunder,

either with or without taking possession of all or any part of the Property or assuming any of the Leases.

(c) Beneficiary takes any action to preserve its security hereunder or cure any default of Beneficiary under the Leases.

(d) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under this Deed of Trust.

(e) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under this Deed of Trust.

(f) Beneficiary or Trustee receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(g) Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

8.3 Powers of Beneficiary.

8.3.1 If Beneficiary performs any act that it is empowered or authorized to perform under this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

8.3.2 Beneficiary may take any of the actions permitted under this Deed of Trust regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

8.3.3 From time to time, Beneficiary may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Deed of Trust. Beneficiary may from time to

time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

8.4 Assignment. All rights of Beneficiary hereunder shall inure to the benefit of its successors and assigns, and all obligations of Trustor shall bind its successors and assigns and any subsequent owner of the Property. All rights of Beneficiary in, to and under this Deed of Trust shall pass to and may be exercised by any assignee of such rights of Beneficiary. Trustor hereby agrees that if Beneficiary gives notice to Trustor of an assignment of said rights, upon such notice, the liability of Trustor to the assignee of Beneficiary shall be immediate and absolute. Trustor will not set up any claim against Beneficiary or any intervening assignee as a defense, counterclaim or setoff to any action brought by Beneficiary or any intervening assignee for any amounts due hereunder or for possession of or the exercise of rights with respect to the Leases or Rents.

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

8.6 Joint and Several Liability. If Trustor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

8.7 Successors in Interest. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section does not waive any prohibitions on assignment or transfer of the Property provided herein or in any of the other Loan Documents.

8.8 Interpretation.

8.8.1 Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

8.8.2 The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

8.8.3 No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

8.8.4 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.

8.9 Waiver of Statutory Rights. To the extent permitted by law, Trustor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Trustor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Trustor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

8.10 Severability. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

8.11 Notices. Any notice, demand, request or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given when made as provided in the Loan Agreement. Any notice or demand delivered to the person or entity named thereunder to accept notices and demands for Trustor shall constitute notice or demand duly delivered to Trustor, even if delivery is refused.

8.12 Interest Rate Agreements. For purposes hereof, all obligations of Trustor to Beneficiary under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Trustor secured hereby.

8.13 WAIVER OF TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TRUSTOR AND BENEFICIARY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF TRUSTOR OR BENEFICIARY. TRUSTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. TRUSTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

8.14 Inconsistencies. In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

8.15 UCC Financing Statements. Trustor hereby authorizes Beneficiary to file UCC financing statements to perfect Beneficiary's security interest in any part of the Property. In addition, Trustor agrees to sign any and all other documents that Beneficiary reasonably deems necessary in its sole discretion to perfect, protect, and continue Beneficiary's lien and security interest in the Property.

8.16 Certain Unsecured Obligations. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the following obligations (the "**Unsecured Obligations**"): (a) any obligations evidenced by or arising under the Indemnity, and (b) any other obligations in this Deed of Trust or in any of the other Loan Documents to the extent that such other obligations relate specifically to the presence on the Property of Hazardous Materials and are the same or have the same effect as any of the obligations evidenced by or arising under the Indemnity. Any breach or default with respect to the Unsecured Obligations shall constitute an Event of Default hereunder, notwithstanding the fact that such Unsecured Obligations are not secured by this Deed of Trust. Nothing in this Section shall impair or limit Beneficiary's right to obtain a judgment in accordance with applicable law after foreclosure for any deficiency in recovery of all obligations that are secured by this Deed of Trust following foreclosure.

8.17 Reserves/Impounds. All sums deposited with Beneficiary in any escrow account or in any completion/repair or other reserve of any kind are hereby pledged as additional security for the Secured Obligations.

8.18 Future Advances. The total amount of indebtedness secured hereby may increase or decrease from time to time, but all such amounts shall be secured hereby, plus interest thereon, together with any disbursements made for the enforcement of this Deed of Trust and any remedies hereunder, payment of taxes, special assessments, utilities or insurance on the Property and interest on such disbursements and all disbursements by Beneficiary pursuant to applicable law (all such indebtedness being hereinafter referred to as the maximum amount secured hereby). This Deed of Trust shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

8.19 Applicable Law. The creation, perfection and enforcement of the lien of this Deed of Trust shall be governed by the laws of the State of Utah without regard to its conflicts of laws principles.

8.20 Water Rights.

8.20.1 Trustor shall diligently comply with all deadlines affecting the Water Rights imposed by law or regulation or any Governmental Authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 8.20, the term "**Governmental Authority**" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Summit, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or Guarantor or all or any portion of the real property subject to this Deed of Trust.

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

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

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

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

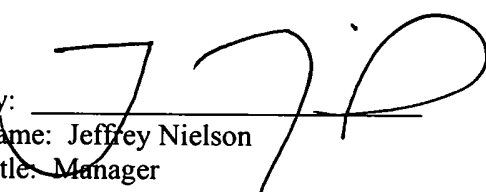
8.21 Property Status. Trustor represents and warrants to Beneficiary that (a) the Property is not used principally for agricultural purposes, and (b) the loan secured by this Deed of Trust was not made primarily for personal, family or household purposes. Trustor acknowledges that the stated purpose for which this Deed of Trust is given is to construct residential rental property. Accordingly, to permit Beneficiary to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Trustor agrees that promptly upon completion of the contemplated improvements, it will provide to a Beneficiary a written summary of the number of dwelling units within the improvements by unit or apartment number and the mailing address for each such unit or apartment. Trustor agrees to promptly update such written summary and provide the same to Beneficiary from time to time upon request from Beneficiary. To further allow Beneficiary to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Trustor agrees to provide a written roll, copies of all tenant leases, a summary list of tenants and addresses by unit or apartment number at least every six months and more frequently at any time upon the request of Beneficiary.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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

616 SOUTH HOLDINGS, LP
a Utah limited partnership

By: 616 SOUTH GP, LLC
a Utah limited liability company
its General Partner

By: 
Name: Jeffrey Nielson
Title: Manager

State Organizational ID No: 9554514-0180

STATE OF Utah
COUNTY OF Salt Lake: ss.

The foregoing instrument was acknowledged before me this 17 day of December, 2015, by JEFFREY NIELSON, the Manager of 616 SOUTH GP, LLC, a Utah limited liability company, the General Partner of **616 SOUTH HOLDINGS, LP**, a Utah limited partnership, for and on behalf of said partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC

[Seal]



EXHIBIT A

DESCRIPTION OF PREMISES

That certain real property located in Salt Lake County, Utah and more particularly described as follows:

PARCEL 1:

A parcel of land being all of eleven entire tracts located within Lot 6 and a portion of Lots 5 & 7, Block 21, Plat "A", Salt Lake City Survey, in the Southwest Quarter (SW 1/4) of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake County, Utah, and described by Warranty Deeds in Book 5250 at Page 1186, Book 5440 at Page 2577, Book 6287 at Pages 0841 & 0842, Book 8293 at Pages 1418 through 1422, a portion of Warranty Deed in Book 5840 at Pages 2836 & 2837, and Quit Claim Deeds in Book 5745 at Pages 172 & 173, Book 6452 at Page 0966, all recorded in the Office of the Salt Lake County Recorder. Said parcel of land is described as follows:

BEGINNING at the Northeasterly corner of said Lot 6, Block 21, Plat "A", Salt Lake City Survey; thence along the East line of said Block 21, South 00°01'49" East (DEED South), 266.00 feet to a Southeasterly corner of said entire tracts; thence along a Southerly boundary line of said entire tracts the following four courses: (1) South 89°57'26" West (DEED West, 130.0 feet), 130.50 feet; (2) North 00°15'12" East (DEED North), 18.00 feet; (3) South 89°57'26" West (DEED West, 108.5 feet), 108.09 feet; (4) South 00°01'53" East (DEED South), 27.00 feet; thence South 89°57'26" West (DEED West), 91.50 feet to a Westerly line of said entire tracts; thence North 00°01'53" West (DEED North), 110.00 feet along said Westerly line to the Northwestern corner of said Lot 7; thence South 89°57'26" West (DEED West), 82.50 feet along a Southerly line to a Southwesterly corner of said entire tracts; thence North 00°01'53" West (DEED North), 165.00 feet along a Westerly line to a Northwestern corner of said entire tracts and North line of said Block 21; thence along the Northerly boundary line of said entire tracts and North line of said Block 21 North 89°57'26" East 412.51 feet (DEED 412.5 feet) to the point of BEGINNING.

PARCEL 2:

A non-exclusive Right of Way, appurtenant to PARCEL 1 described herein over: COMMENCING at a point 55 feet North from the Southwest corner of Lot 7, Block 21, Plat "A", Salt Lake City Survey, running thence North 27 feet; thence East 11 rods; thence South 45° East 25.5 feet; thence East 130.5 feet; thence South 18 feet; thence West 150 feet; thence North 45° West 12 feet 9 inches; thence West 171 feet to the point of BEGINNING.