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5/18/2021 1:44:00 PM \$40.00  
Book - 11176 Pg - 4468-4487  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 20 P.

PREPARED BY, AND AFTER RECORDING  
RETURN TO:

HOMESTREET BANK  
135 S. State College Blvd., Ste. 600  
Brea, CA 92821  
Attn: HomeStreet Commercial Capital

Tax Parcel Number(s): 15-12-276-028, 15-12-276-029, 15-12-276-031

#141636-BHB

Space Above for Recorder's Use

DEED OF TRUST,  
ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT  
(UTAH)

I. THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Instrument") is dated as of **May 17, 2021**, and is given by **GPWT LLC, a Utah limited liability company**, whose address is **4000 Industrial Way, Benicia, CA 94510**, as grantor ("Borrower"), to **FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation**, as trustee ("Trustee"), for the benefit of **HOMESTREET BANK, a Washington state chartered commercial bank**, whose address is **c/o HomeStreet Bank - Commercial Real Estate, 601 Union Street, Suite 2000, Seattle, WA 98101-2326**, as beneficiary ("Lender"). **GPWT LLC's** organizational identification number is **12205717-0160**.

II. Borrower in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, assigns, conveys and warrants to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in **Salt Lake County, State of Utah** and described in Exhibit "A" attached to this Instrument.

III. TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower's Promissory Note payable to Lender, dated as of the date of this Instrument, and maturing on the earlier of (i) **June 1, 2051**, and (ii) the date on which the unpaid principal balance of the Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document (the "**Maturity Date**"), in the principal amount of **ELEVEN MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (US \$11,400,000.00)**, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

IV. Borrower covenants and agrees that: (i) Borrower is lawfully seized of the estate hereby conveyed and has full right and power to grant, convey and assign the Mortgaged Property, (ii) the Mortgaged Property is free

Utah Deed of Trust

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from liens, encumbrances, exceptions and other charges of any kind whatsoever, except for the exceptions listed in Lender's title insurance policy insuring this Instrument or exceptions otherwise approved in writing by Lender ("**Permitted Exceptions**"), (iii) no other liens or encumbrances, whether superior or inferior to this Instrument, shall be created or suffered to be created by Borrower without the prior written consent of Lender, (iv) no default on the part of Borrower or any other person exists under any of the Permitted Exceptions and all of the Permitted Exceptions are in full force and effect and in good standing, without modification, (v) complete and current copies of the Permitted Exceptions have been furnished to Lender, and none of them have been or will be modified by Borrower without Lender's prior written consent, (vi) Borrower shall fully comply with all the terms of the Permitted Exceptions and shall deliver to Lender a copy of all notices delivered in connection with the Permitted Exceptions, (vii) Lender has the right to contact the other parties to the Permitted Exceptions to confirm the status thereof, and Borrower from time to time shall, at the request of Lender, request of such parties a certificate confirming such information regarding the Permitted Exceptions as Lender may request, and (viii) Borrower shall forever warrant and defend the Mortgaged Property unto Lender against all claims and demands of any other person whatsoever, subject only to non-delinquent taxes and assessments and the Permitted Exceptions.

**Covenants.** Borrower, and by their acceptance hereof, each of Trustee and Lender covenant and agree as follows:

**A. DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings and any capitalized term not specifically defined in this Instrument shall have the meaning ascribed to that term in the Loan Agreement:

"**Assignment**" means, collectively, the provisions of sections C and D of this Instrument relating to the assignment of rents and leases affecting the Mortgaged Property.

"**Attorneys' Fees and Costs**" means (a) fees and out-of-pocket costs of Lender's and Loan Servicer's attorneys, as applicable (whether or not any lawsuit or other proceeding is instituted), including costs of Lender's and Loan Servicer's allocable costs of in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (b) costs and fees of expert witnesses, including appraisers; and (c) investigatory fees. As used in this Instrument and in the Note, "Attorneys' Fees and Costs" shall include those awarded by an appellate court.

"**Borrower**" means all Persons identified as "Borrower" in Recital I of this Instrument, together with their successors and assigns.

"**Collateral Agreement**" has the definition given such term in the Loan Agreement.

"**Environmental Indemnity**" means that certain Environmental Indemnity Agreement dated the same date as this Instrument, executed by Borrower, as Indemnitor, in favor of Lender, as Indemnitee.

"**Fixtures**" means all property now or hereafter owned by Borrower which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including without limitation: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; escalators and elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment. All such items shall be deemed part of the Land and not severable wholly or in part without material injury to the freehold.

**"Governmental Authority"** means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property or over Borrower.

**"Hazardous Materials"** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

**"Hazardous Materials Laws"** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, as amended by the Superfund Amendments Reauthorization Act of 1986, the Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Solid Waste Disposal Act, as amended, the Clean Air Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs.

**"Improvements"** means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

**"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under, the Note, the Loan Agreement, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of this Instrument under section G of this Instrument or any other applicable provision of the Loan Agreement, this Instrument or any other Loan Document or as permitted by law.

**"Land"** means the land described in Exhibit "A".

**"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

**"Lender"** means the Person or Persons identified as "Lender" in Recital I of this Instrument, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.

**"Loan"** means the loan evidenced by the Note and secured by this Instrument.

**"Loan Agreement"** means the Loan Agreement executed by Borrower and Lender and dated as of the date of this Instrument, as such agreement may be amended from time to time.

**"Loan Documents"** means the Note, this Instrument, the Assignment, the Loan Agreement, all indemnity agreements, all Collateral Agreements, O&M Plans, and any other documents now or in the future executed by

Borrower, any Guarantor or any other Person in connection with the Loan, as such documents may be amended from time to time, but for purposes of this Instrument only, the term "Loan Documents" *specifically excludes* the Environmental Indemnity and the Guaranty.

**"Loan Servicer"** means the Person or Persons that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Instrument and any other Loan Document, and otherwise to service the Loan for the benefit of Lender. Unless otherwise specified in section B of the Note, or unless Borrower receives notice to the contrary, the Loan Servicer means the Person or Persons identified as "Lender" in Recital I of this Instrument.

**"Mortgaged Property"** means all of Borrower's present and future right, title and interest in and to all of the following: (1) the Land; (2) the Improvements; (3) the Fixtures; (4) the Personalty; (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated; (6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement; (7) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof; (8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations; (9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; (10) all Rents and Leases; (11) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Loan; (12) all funds on deposit pursuant to any separate agreement between Borrower and Lender (including, without limitation, all Imposition Deposits) for the purpose of establishing replacement reserves for the Mortgaged Property, to fund any water and sewer charges, premiums for fire or other hazard insurance, rent loss insurance or other insurance required by Lender, taxes, assessments, vault rentals, or other charges or expenses required by Lender to protect the Mortgaged Property, establishing a fund to assure the completion of repairs or improvements specified in that agreement, or assuring reduction of the outstanding principal balance of the Indebtedness if the occupancy of or income from the Mortgaged Property does not increase to a level specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account; (13) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated); (14) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits; and (15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

**"Note"** means the Promissory Note described in Recital III of this Instrument, including all schedules, riders, allonges and addenda, as such Promissory Note may be amended from time to time.

**"Person"** means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or

municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

**"Personalty"** means all: (1) accounts (including deposit accounts); (2) equipment and inventory owned by Borrower which are used now or in the future in connection with the ownership, development, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, materials, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software), wherever located, whether in the possession of Borrower, warehousemen, bailees or any other person, together with all documents, contract rights and general intangibles related thereto; (3) other tangible personal property (other than Fixtures) which are used now or in the future in connection with the ownership, development, management or operation of the Land or the Improvements or are located on the Land or in the Improvements; (4) any operating agreements relating to the Land or the Improvements; (5) any contracts and policies of insurance which insure any Improvements on the Land, or any Fixtures or personal property thereon, against casualty and theft, and all monies and proceeds and rights thereto which may become payable by virtue of any insurance contracts or policies; (6) any management contracts, surveys, plats, working drawings, reports, tests borings, market surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, together with all performance, payment, completion or other surety bonds in connection with or related to any such contracts which are transferable by Borrower; (7) all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land or the Improvements and including subsidy or similar payments received from any sources, including a Governmental Authority; and (8) any rights of Borrower in or under letters of credit.

**"Property Jurisdiction"** means the jurisdiction in which the Land is located.

**"Rents"** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

**"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

**"Uniform Commercial Code" or "UCC"** means the Uniform Commercial Code as in effect in the Property Jurisdiction; *provided* that, to the extent perfection or the effect of perfection or non-perfection or the priority of any security interest in any collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the Property Jurisdiction, **"Uniform Commercial Code" or "UCC"** means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

## **B. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

**B.1.** This Instrument constitutes a security agreement pursuant to the Uniform Commercial Code with respect to (a) any of the Mortgaged Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Instrument; and (b) any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Borrower as Debtor and Lender as Secured Party and affecting property in any way connected with the use and enjoyment of the Mortgaged Property (any and all such

other property constituting "UCC Collateral") for purposes of this Instrument. Borrower hereby grants Lender a security interest in all property described in clauses (a) and (b) above as security for the Indebtedness. Borrower and Lender agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall be construed as limiting the parties' stated intention that everything used in connection with the production of income from the Mortgaged Property, or adapted for use therein, or which is described or reflected in this Instrument, is and at all times shall be regarded as part of the Land.

**B.2.** Borrower's exact legal name is correctly set forth on the signature page of this Instrument. If Borrower is not an individual, Borrower is an organization of the type specified in the introductory paragraph of this Instrument. If Borrower is a registered entity, Borrower is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Instrument. If Borrower is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Instrument. Borrower will not cause or permit any change to be made in its name, identity or corporate, company or partnership structure unless Borrower shall have notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Lender for the purpose of further perfecting or protecting the lien and security interest of Lender in the Mortgaged Property. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording, including software, writing, plans, specifications and schematics concerning the Mortgaged Property, has been for the preceding four months (or less if for the entire existence of Borrower) and will continue to be the address of Borrower set forth in the first paragraph of this Instrument (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). If Borrower is an individual, Borrower's principal residence has been for the preceding four months and will continue to be the address of the principal residence of Borrower set forth at the end of this Instrument (unless Borrower notifies Lender of any change in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is set forth in paragraph A of this Instrument. Borrower shall promptly notify Lender of any change of its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender of such organizational identification number. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the UCC Collateral. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Borrower hereby authorizes Lender (and Lender's representatives and agents) to file financing statements (and amendments thereto) relating to the Mortgaged Property. The form and substance of any financing statement filed with respect to this Instrument shall be as Lender, in its sole discretion, may determine. Borrower shall pay all costs of filing such financing statements and any extensions, continuations, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements which Lender may require.

**B.3.** With respect to the property subject to the foregoing security interest, Lender shall have all the rights and remedies (a) of a secured party under the Uniform Commercial Code, (b) provided herein, including without limitation the right to cause such Mortgaged Property to be sold by Trustee under the power of sale granted by this Instrument, and (c) provided by law. In exercising its remedies, Lender may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies. Upon demand by Lender following an Event of Default hereunder, Borrower shall assemble any items of personal property and make them available to Lender at the Mortgaged Property. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. The UCC Collateral may be sold at any one or more public or private sales as permitted by applicable law.

**C. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.**

**C.1.** As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in section A above. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

**C.2.** After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred which, if it is amenable to cure, has not been timely cured, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

**C.3.** Borrower states that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Loan), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this section C, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two (2) months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two (2) months prior to the due dates of such Rents.

**C.4.** Upon any Event of Default hereunder, Lender may, in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof in the same manner and to the same extent as Borrower could do the same, including without limitation the execution, enforcement, cancellation and modification of Leases, the collection of all Rents of the Mortgaged Property, the

removal and eviction of tenants and other occupants, the making of alterations and repairs to the Mortgaged Property, and the execution and termination of contracts providing for management or maintenance of the Mortgaged Property, all on such terms as are deemed best by Lender to protect the security of this Instrument. From and after the occurrence of any such Event of Default, if any owner of the Mortgaged Property shall occupy the Mortgaged Property or part thereof such owner shall pay to Lender in advance on the first day of each month a reasonable rental for the space so occupied, and upon failure so to do Lender shall be entitled to remove such owner from the Mortgaged Property by any appropriate action or proceedings. Following an Event of Default hereunder, Borrower hereby irrevocably consents and agrees that Lender shall be entitled (regardless of the adequacy of Lender's security) to the appointment of a custodial receiver or general receiver with power of sale. Said receiver may serve without bond, shall have the usual powers and duties of receivers in like or similar cases, all the powers and duties of Lender set forth in this Instrument or any of the other Loan Documents, and, in the case of a general receiver, a right to sell the Mortgaged Property. Employment by Lender shall not disqualify a person from serving as receiver. The receiver shall be entitled to receive a reasonable fee for all its services rendered in connection with the receivership.

**C.5.** All Rents collected subsequent to delivery of written notice by Lender to Borrower of an Event of Default hereunder shall be applied first to the costs, if any, of taking control of and managing the Mortgaged Property and collecting the Rents, including without limitation Attorneys' Fees and Costs, receiver's fees, premiums on receiver's bonds, costs of maintenance and repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Borrower under the Leases, and then to the Indebtedness. Lender or the receiver shall be liable to account only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Lender under this section C.

**C.6.** To the extent, if any, that the costs of taking control of and managing the Mortgaged Property, collecting the Rents, and discharging obligations and liabilities of Borrower under the Leases, exceed the Rents of the Mortgaged Property, the excess sums expended for such purposes shall be Indebtedness secured by this Instrument. Such excess sums shall be payable upon demand by Lender and shall bear interest from the date of disbursement at the greater of the Default Rate under the Note, or the maximum rate permitted by law.

**C.7.** Nothing herein shall constitute Lender a "mortgagee in possession" prior to its actual entry upon and taking possession of the Mortgaged Property. Entry upon and taking possession by a receiver shall not constitute possession by Lender.

**C.8.** Lender may enforce this Assignment without first resorting to or exhausting any security or collateral for the Indebtedness.

**C.9.** Under no circumstances shall Lender have any duty to produce Rents from the Mortgaged Property. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Mortgaged Property, Lender is not and shall not be deemed to be: (a) responsible for any waste committed by tenants or any other parties, any dangerous or defective condition of the Mortgaged Property, or any negligence in the management, upkeep, repair, or control of the Mortgaged Property; (b) responsible for any loss sustained by Borrower resulting from Lender's failure to lease the Mortgaged Property or from any other act or omission of Lender in managing the Mortgaged Property or administering the Leases; or (c) liable in any manner for the Mortgaged Property or the use, occupancy, enjoyment or operation of all or any part of it.

**C.10.** Borrower shall indemnify, defend with counsel selected by Lender in its sole discretion, and hold Lender harmless from and against any and all claims, demands, liabilities, losses, lawsuits, judgments, damages, costs and expenses, including, without limitation, Attorneys' Fees and Costs, to which Lender may be exposed or which Lender may incur arising out of or resulting from this Assignment of Rents or from the Assignment of Leases, including,



without limitation, claims or demands for security deposits from tenants deposited with Borrower, and all claims or demands whatsoever asserted against Lender to satisfy any obligations of the landlord under the Leases. This agreement by Borrower to indemnify Lender shall survive the release and cancellation of any or all of the Indebtedness and the full or partial release and or reconveyance of this Instrument.

**D. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**

**D.1.** As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in section A above. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

**D.2.** Until Lender gives notice to Borrower of Lender's exercise of its rights under this section D, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this section D or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

**D.3.** Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this section D shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to section D.1 above shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in or about the Mortgaged Property. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (a) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (b) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (c) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

**D.4.** Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this section D at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

**D.5.** Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase.

**D.6.** Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (a) such Leases are subordinate to the lien of this Instrument; (b) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (c) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (d) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (e) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (f) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

**D.7.** Borrower shall not receive or accept Rent under any Lease for more than two (2) months in advance.

**E. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

**F. APPLICATION OF PAYMENTS.** Except as applicable law or this Instrument may otherwise provide, all payments received by Lender under the Note or this Instrument shall be applied by Lender in the following order of priority: (1) Lender's and Trustee's expenses incurred in any efforts to enforce any terms of this Instrument; (2) interest payable on advances made to protect the security of this Instrument; (3) principal of such advances; (4) amounts payable to Lender by Borrower under section G below for reserves; (5) interest and late charges payable on the Note; (6) principal of the Note; and (7) any other Indebtedness in such order as Lender, at its option, may determine; provided, however, that Lender may, at its option, apply any such payments received to interest on or principal of the Note prior to applying such payments to interest on and principal of advances made to protect the security of this Instrument.

**G. PROTECTION OF LENDER'S SECURITY.**

**G.1.** If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (a) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (b) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (c) procurement of the insurance required by section D.2 of the Loan Agreement, (d) payment of amounts which Borrower has failed to pay under sections D.1 and D.6 of the Loan Agreement, and (e) advances made by Lender to

pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "**Prior Lien**").

**G.2.** Any amounts disbursed by Lender under this section G, or under any other provision of this Instrument that treats such disbursement as being made under this section G, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "**Default Rate**", as defined in the Note.

**G.3.** Nothing in this section G shall require Lender to incur any expense or take any action.

**H. EVENTS OF DEFAULT.** An Event of Default under the Loan Agreement shall constitute an Event of Default under this Instrument.

**I. REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Lender's exercise of any particular right or remedy will not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time and as often as Lender chooses.

**J. WAIVER OF STATUTE OF LIMITATIONS, OFFSETS, AND COUNTERCLAIMS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations under this Instrument will be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Loan Documents.

**K. WAIVER OF MARSHALING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

**L. ADDITIONAL DOCUMENTS; POWER OF ATTORNEY.** Borrower, from time to time, shall execute, acknowledge and deliver to Lender upon request, and hereby irrevocably appoints Lender its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Lender, as Lender may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Instrument, and the priority thereof. Borrower shall pay to Lender upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

**M. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

**M.1.** This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction. In addition to the foregoing, section C above of this Instrument is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. §§57-26-101 *et seq.* ("**Rents**")

Act”), and in the event of any conflict or inconsistency between the provisions of this Instrument and the provisions of the Rents Act, the provisions of the Rents Act shall control.

**M.2.** Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have non-exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue or defense to venue to which it might be entitled by virtue of domicile, habitual residence, inconvenient forum or otherwise.

**N. NOTICE.** Except as otherwise specified by the laws of the Property Jurisdiction, all notices, demands and other communications required or permitted to be given pursuant to this Instrument shall be given in accordance with section H.3 of the Loan Agreement.

**O. SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by section E.1 of the Loan Agreement shall constitute an Event of Default.

**P. JOINT AND SEVERAL LIABILITY.** If more than one Person signs this Instrument as Borrower, the obligations of such Persons under this Instrument, the Note and other Loan Documents shall be joint and several. In exercising any rights hereunder or taking actions provided for herein, Lender and Trustee may act through their respective employees, agents or independent contractors as authorized by Lender and Trustee. Upon the occurrence of any default, Lender may proceed against any Borrower, any Guarantor, or any of Lender's security for the Loan in such order and manner as Lender in its sole discretion may elect.

**Q. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

**Q.1.** The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

**Q.2.** No creditor of any party to this Instrument and no other Person shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (a) any arrangement (a "Servicing Arrangement") between Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (b) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (c) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

**R. SEVERABILITY; ENTIRE AGREEMENT.** The parties intend that the provisions of this Instrument and all other Loan Documents shall be legally severable. If any term or provision of this Instrument, or any other Loan Document, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Instrument or of such other Loan Document shall not be affected thereby, and each term and provision shall be valid and be enforceable to the fullest extent permitted by law. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument.

**S. CONSTRUCTION.** The captions and headings of the Sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this

Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation." The use of one gender includes the other gender, as the context may require. Unless the context requires otherwise, (1) any definition of or reference to any agreement, instrument or other document in this Instrument shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this Instrument or any other Loan Document), and (2) any reference in this Instrument to any Person shall be construed to include such Person's successors and assigns.

**T. SUBROGATION.** If, and to the extent that, the proceeds of the Loan, or subsequent advances under section G above, are used to pay, satisfy or discharge a Prior Lien, such Loan proceeds or advances shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

**U. [Intentionally Omitted]**

**V. ACCELERATION; REMEDIES.**

**V.1.** At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Instrument, the Loan Agreement or any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of an Event of Default or any other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs, and costs of documentary evidence, abstracts and title reports.

**V.2.** If the power of sale is invoked, Trustee shall execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall record such notice in each county in which the Mortgaged Property is located. Lender or Trustee shall mail notice of default in the manner provided by the laws of Utah to Borrower and to such other Persons as the laws of Utah prescribe. Trustee shall give public notice of sale and shall sell the Mortgaged Property according to the laws of Utah. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale.

**V.3.** Within a reasonable time after the sale, Trustee shall deliver to the purchaser at the sale, a deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, Attorneys' Fees and Costs and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the Person or Persons legally entitled thereto or to the county clerk of the county in which the sale took place.

**W. FIXTURE FILING.** This Instrument is also a fixture filing under the Uniform Commercial Code of Utah.

**X. RECONVEYANCE.** Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Instrument and the Note to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the Person or Persons legally entitled thereto. Such Person or Persons shall pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

**Y. SUBSTITUTE TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Instrument. Without conveyance of the Mortgaged Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by applicable law.

**Z. REQUEST FOR NOTICES.** Borrower requests that copies of the notice of default and notice of sale be sent to him at Borrower's address stated in section 0 of this Instrument.

**AA. MODIFICATIONS AND WAIVERS.** This Instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

**BB. NO CONDOMINIUM.** Borrower hereby covenants and agrees not to file or record any declaration or constituent condominium document which would subject the Mortgaged Property to the Condominium Ownership Act codified in Title 57, Chapter 8 of the Utah Code, or any other law later enacted or effective related to condominiums (the "Act"), without Lender's prior written consent. As to any portion of the Mortgaged Property which is later submitted to the Act, this Instrument shall continue in effect and extend to all of Borrower's right, title and interest in and to any and all units and apartments created thereby and Borrower's interest in the underlying land and common elements, and all other interests and easements pertaining thereto, without further action.

**CC. INTERPRETATION.** It is the intention of Borrower and Lender that if any provision of this Instrument or any other Loan Document is capable of two (2) constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. Borrower acknowledges that Lender has attempted in good faith to assure that this Instrument, the Note and all other Loan Documents are in compliance with applicable laws of the Property Jurisdiction and federal laws. Nevertheless, in the event that any provision of this Instrument, the Note or any other Loan Document is not in compliance with any such laws, then the non-complying provision shall be deemed to be deleted or modified to the extent necessary to assure legal compliance. Similarly, in the event any language or disclosure required by applicable laws of the Property Jurisdiction is not contained in the Loan Documents, then the Loan Documents shall be deemed to have been supplemented to add such language or disclosure, or, at Lender's option, Lender may provide such additional language or disclosure. In either event, such legal requirement shall thereby be satisfied and such noncompliance shall be deemed to have been cured for all purposes. Within ten (10) days after written request by Lender, Borrower agrees to execute such documentation as Lender may require to cure any legal compliance issues or deficiencies in the Loan Documents.

**DD. FUTURE ADVANCES.** In addition to the Indebtedness, this Instrument shall (to the extent allowed by applicable law) also secure payment of the principal, interest and other charges due on all other future loans or advances made by Lender to Borrower (or any successor in interest to Borrower as the owner of all or any part of the Mortgaged Property) or any entity controlled by Borrower or any Guarantor unless the promissory note evidencing such loan or advance specifically states that it is not secured by this Instrument ("**Future Advances**"), including all extensions, renewals and modifications of any such Future Advances.

**EE. EXECUTION IN COUNTERPARTS.** This Instrument may be executed in multiple counterparts, and the separate signature pages and notary acknowledgments may then be combined into a single original document for recordation.

**FF. LEGAL AND INCIDENTAL FEES AND EXPENSES; PAYMENT OF CLOSING COSTS.** Borrower shall pay or reimburse Lender for all legal, appraisal, and inspection fees; title insurance and survey costs; recording and filing fees; hazard and liability insurance for the Mortgaged Property; and any and all other charges or expenses incurred by Lender in connection with the Loan, including, without limitation, all such costs and fees involved in processing Borrower's

loan application, preparing the Loan Documents, and closing, administering, collecting or enforcing the Loan. Borrower shall indemnify with counsel selected by Lender in its sole discretion and hold Lender harmless against any and all claims for fees, charges, real estate commissions, broker fees, taxes, or other expenses of any kind in any way connected with the Loan or the Mortgaged Property. Borrower's obligation to pay such expenses shall not be dependent on the closing of the Loan and shall survive any termination of any loan commitment executed by Lender. In addition, Borrower agrees to reimburse Lender for all of its reasonable costs, charges, expenses, and Attorneys' Fees and Costs that Lender incurs, with or without litigation: (i) in connection with the enforcement of any remedy contained in this Instrument or any other Loan Document, or (ii) in connection with any action taken by Lender in accordance with the terms of any of the Loan Documents to protect its interests or to recover amounts owed under the Loan, including, without limitation, any actions necessitated by the bankruptcy of Borrower or any Guarantor or the exercise by any other creditor of Borrower or any Guarantor of its right against Borrower, any Guarantor or the Mortgaged Property. Borrower specifically acknowledges that Lender may recover its reasonable costs, charges, expenses, and Attorneys' Fees and Costs in any litigation, appeal of any trial court decision, any arbitration proceeding, any action contesting or seeking to restrain, enjoin, stay or postpone the exercise of any remedy, and any bankruptcy or other insolvency proceeding involving Borrower, any Guarantor, or the Mortgaged Property. Such costs, expenses, and fees shall be due and payable upon demand and, if not paid within ten (10) days thereafter, shall bear interest from the date of such demand to and including the date of collection at the Default Rate set forth in the Note. If for any reason the escrow or closing agent fails to reserve and pay for all of Lender's fees, legal, documentation, appraisal, title, recording and other closing costs incurred in connection with the closing and funding of the Loan, then Borrower shall pay or reimburse Lender for any such unpaid fees or costs within ten (10) days after written demand by Lender itemizing the unpaid fees and costs. Failure of Borrower to so pay or reimburse Lender for any such unpaid fees and costs within ten (10) days after written demand by Lender shall constitute an Event of Default and, without limiting any other remedies of Lender, Lender may immediately institute the Default Rate under the Note until such amounts are received by Lender.

**GG. APPRAISALS AND INSPECTIONS.** (1) In the event of: (a) an Event of Default, (b) a material change in market conditions or the physical aspects of the Mortgaged Property, or (c) a failure of the Mortgaged Property to achieve the performance expectations of the original appraisal, or (2) as may otherwise be required by any applicable laws or regulatory authority, Lender may obtain an appraisal or appraisal update for all or any part of the Mortgaged Property prepared in accordance with written instructions from Lender by a third party appraiser engaged directly by Lender. Each such appraiser and appraisal (or appraisal update) shall be satisfactory to Lender (including satisfaction of applicable regulatory requirements). If Lender obtains an appraisal (or appraisal update), Borrower will fully cooperate with Lender and the appraiser, and will provide the information necessary to prepare the appraisal (or appraisal update). Borrower will pay the cost of any such appraisal or appraisal update within ten (10) days following demand by Lender; provided, however, that Borrower's obligation for appraisal costs shall not exceed one appraisal within any 12-month period unless an Event of Default has occurred. Lender shall at all times have the right to enter upon the Mortgaged Property to inspect the Mortgaged Property, which right shall not terminate unless and until the Loan is paid in full. Borrower agrees to pay the reasonable costs of annual inspections by third party consultants hired by Lender. Inspection by Lender of the Mortgaged Property is for the purpose of protecting the security of Lender.

**HH. ASSIGNMENT AND PARTICIPATION.**

**HH.1.** Lender shall have the right, at any time and from time to time, to assign or sell the Loan, and/or enter into one or more participations in the Loan, accompanied by an assignment and/or delegation of any or all related rights or obligations of Lender under the Loan Documents, without the need for any form of consent from Borrower or any Guarantor. Borrower agrees to cooperate with Lender's efforts to do any of the foregoing, to provide such further or additional financial or other documentation as Lender may reasonably request in connection with any such sale, assignment or participation, and to execute all documents reasonably required by Lender in connection

therewith that do not materially adversely affect Borrower's rights under the Loan Documents, and provided such cooperation shall be at no material expense or liability to Borrower.

**HH.2.** The terms, covenants and conditions of the Loan Documents shall be binding upon and inure to the benefit of the heirs, executors, administrators, permitted successors and permitted assigns of the parties thereto.

**II. NO SETOFF BY BORROWER.** Borrower's obligation to timely pay and perform all obligations under the Note, this Instrument, and the other Loan Documents shall be absolute and unconditional and shall not be affected by any event or circumstance, including, without limitation, any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or any other right that Borrower or any Guarantor may have or claim against Lender or any other Person.

**JJ. NONWAIVER.** No failure of Lender to enforce its rights, remedies, or options in the Event of Default shall be deemed to be a waiver of any of its rights, remedies, or options hereunder or at law, and it may at any time that such Default exists or continues to exist, enforce any or all of its rights, remedies, and options arising by reason of such default. Furthermore, no waiver of Lender's rights or remedies in one or more instances shall establish a course of dealing or other agreement that will bind Lender or prohibit Lender from enforcing the terms of the Loan Documents in another instance.

**KK. SURVIVAL OF WARRANTIES.** All agreements, representations, and warranties made in the Loan Documents shall survive execution, delivery, and the making of the Loan hereunder and shall continue in full force and effect until the obligations of Borrower evidenced by the Loan Documents have been fully paid and performed.

**LL. ELECTRONIC TRANSMISSION OF DATA.** Lender and Borrower agree that certain data related to the Loan (including confidential information, documents, applications and reports) may be transmitted electronically, including over the Internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their affiliates, and other Persons involved with the subject matter of this Instrument or any of the other Loan Documents. Borrower acknowledges and agrees that (1) there are risks associated with the use of electronic transmission and that Lender does not control the method of transmittal or service providers, (2) Lender has no obligation or responsibility whatsoever and assumes no duty or obligation for the security, receipt, or third party interception of such transmissions, and (3) Borrower will release, hold harmless and indemnify Lender from any claim, damage or loss, including that arising in whole or part from Lender's strict liability or sole, comparative or contributory negligence, which is related to the electronic transmittal of data.

**MM. PUBLICATION AND RELEASE OF INFORMATION.** Upon closing of the Loan, Lender may publicize financing of the Mortgaged Property by media of Lender's choice and Lender may use Borrower's name and the name of the Mortgaged Property in any such release.

**NN. BALLOON PAYMENT NOTICE.** The Note secured hereby provides for a balloon payment of the entire Indebtedness upon the Maturity Date of the Note.

**OO. DOCUMENT IMAGING.** Lender shall be entitled, in its sole discretion, to image or make copies of all or any selection of the agreements, instruments, documents, items and records governing, arising from or relating to any of Borrower's loans, including, without limitation, this Instrument and the other Loan Documents, and Lender may destroy or archive the paper originals. Borrower waives (1) any right to insist or require that Lender produce paper originals, (2) agrees that such images shall be accorded the same force and effect as the paper originals, (3) agrees that Lender is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (4) further agrees that any executed facsimile (faxed), scanned, or other imaged copy of this Instrument or any other Loan Document shall be deemed to be of the same force and effect as the original manually executed document.



**PP. WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER, AND BORROWER ACKNOWLEDGES THAT NO PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT BORROWER HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THE LOAN DOCUMENTS AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF BORROWER'S OWN FREE WILL, AND THAT BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

**ATTACHED EXHIBIT.** The following Exhibit is attached to this Instrument:

Exhibit "A"	Description of the Land
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THIS DEED OF TRUST SECURES A VARIABLE RATE PROMISSORY NOTE. THIS DEED OF TRUST IS A FIRST DEED OF TRUST. NO FURTHER ENCUMBRANCES MAY BE RECORDED AGAINST THE MORTGAGED PROPERTY WITHOUT THE PRIOR WRITTEN CONSENT OF LENDER. FAILURE TO COMPLY WITH THIS PROVISION SHALL CONSTITUTE AN EVENT OF DEFAULT AND AT LENDER'S OPTION THE LOAN SHALL IMMEDIATELY BECOME DUE AND PAYABLE. CONSENT TO ONE FURTHER ENCUMBRANCE SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO REQUIRE SUCH CONSENT TO FUTURE OR SUCCESSIVE ENCUMBRANCES.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

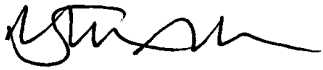
**SIGNATURE(S) ON FOLLOWING PAGE(S)**

**IN WITNESS WHEREOF**, Borrower has signed and delivered this Instrument under seal (where applicable) or has caused this Instrument to be signed and delivered by its duly authorized representative under seal (where applicable). Where applicable law so provides or allows, Borrower intends that this Instrument shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**GPWT LLC,  
a Utah limited liability company**

By: \_\_\_\_\_



**JOHN A. QUINN,  
Sole Member**

(SEAL)

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

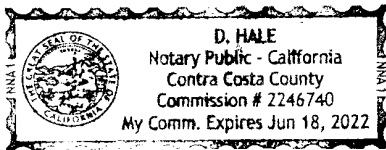
State of California ) ss.

County of Contra Costa )

On May 17, 2021, before me, D. Hale, Notary Public, personally appeared **JOHN A. QUINN**,

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

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



WITNESS my hand and official seal.

Signature

[Signature]  
Signature of Notary Public

Place Notary Seal Above

**EXHIBIT "A"**  
**DESCRIPTION OF THE LAND**

THE LAND REFERRED TO HEREIN IS SITUATED IN SALT LAKE COUNTY, STATE OF UTAH, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

The South 31 feet of Lot 32, all of Lot 33, in Block 1, WALKER'S SUBDIVISION of Block 5, Plat "A", Salt Lake City Survey, according to the official plat thereof on file and of record in the office of the Salt Lake County Recorder.

**PARCEL 2:**

Lot 34, and the North 1 foot of Lot 35, Block 1, WALKER'S SUBDIVISION of Block 5, Plat "A", Salt Lake City Survey, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder.

**PARCEL 3:**

The South half of Lot 36 and the North half of Lot 37, Block 1, WALKER'S SUBDIVISION of Block 5, Plat "A", Salt Lake City Survey, according to the plat thereof as recorded in the office of the Salt Lake County Recorder.

APN: 15-12-276-028, 15-12-276-029, 15-12-276-031

PROPERTY ADDRESS: 844, 850 AND 856 S. WEST TEMPLE, SALT LAKE CITY, UT 84101