

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Comerica Bank  
P.O. Box 650282  
Dallas, Texas 75265-0282  
Attention: Commercial Lending Services, Mail Code 6514

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RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
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**DEED OF TRUST, SECURITY AGREEMENT  
AND FINANCING STATEMENT**

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

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

This Deed of Trust, Security Agreement and Financing Statement ("**Deed of Trust**") is made to be effective as of September 8, 2021 (the "**Effective Date**") by SLC CAMBER, LLC, a Delaware limited liability company, whose address is 500 W. 5th St. Suite 700, Attention: David L. Roberts (called the "**Trustor**" and "**Debtor**"), to First American Title Insurance Company, whose address is 215 South State Street, Suite 380, Salt Lake City, Utah 84111 ("**Trustee**"), for the use and benefit of Comerica Bank, a Texas banking association, whose address is 300 West 6th Street, Suite 1950, Austin, Texas 78701, Attention: Commercial Real Estate Department, in its capacity as Agent, for the ratable benefit of itself and the other Lenders, as defined in the Loan Agreement (called the "**Beneficiary**" and "**Secured Party**"), and a security agreement between Debtor and Secured Party. Capitalized terms used but not otherwise defined herein shall have the meaning given such terms in the Loan Agreement (as defined below).

**W I T N E S S E T H:**

**ARTICLE 1  
IDENTIFICATION OF THE TRUST PROPERTY  
AND ITS CONVEYANCE TO THE TRUSTEE**

**Section 1.1 TRUSTOR'S CONVEYANCE OF THE TRUST PROPERTY TO THE TRUSTEE TO SECURE THE INDEBTEDNESS.** To secure payment of principal, lawful interest and other elements of the Indebtedness described and defined in Article 2, in consideration of the uses and trusts (the "**Trust**") established and continued by this Deed of Trust and in consideration of Ten Dollars (\$10.00) and other valuable consideration paid before delivery of this Deed of Trust by each of Trustee and Beneficiary to Trustor, who hereby acknowledges its receipt and that it is reasonably equivalent value for this Deed of Trust and

all other security and rights given by Trustor, Trustor has GRANTED, BARGAINED, SOLD, CONVEYED, TRANSFERRED, ASSIGNED, CONFIRMED AND DELIVERED, in the Trust, with power of sale and right of entry, and by these presents does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN, CONFIRM AND DELIVER unto the Trustee and to his successors or substitutes, in the Trust, with the power of sale the following property (collectively, the **"Trust Property"**):

- (a) **Real Property.** All of the real estate and premises described or referred to on Exhibit A, together with (i) all of Trustor's estate, right, title and interest in and to all easements and rights-of-way for utilities, ingress or egress to or from said property and (ii) all interests of Trustor in and to all streets, rights-of-way, alleys or strips of land adjoining said property (collectively, the **"Real Property"**).
- (b) **Buildings and Improvements.** All of Trustor's right, title and interest in and to all existing and all future buildings on the Real Property and other improvements to it, all of which Trustor and Beneficiary hereby irrevocably declare to be real estate and part of the Real Property, including all water, sewage, drainage, flood control and water quality control facilities, wells, supply, collection and distribution systems, paving, landscaping and other improvements (collectively, the **"Improvements"**).
- (c) **Fixtures, Equipment and Supplies.** All of Trustor's right, title and interest in and to all fixtures, equipment and supplies (the **"Fixtures and Equipment"**) now or hereafter attached to, used, intended or acquired for use for, or in connection with, the construction, maintenance, operation or repair of the Real Property or Improvements, or for the present or future replacement or replenishment of used portions of it, and all related parts, filters and supplies, including but not limited to, all heating, lighting, cooling, ventilating, air conditioning, environment control, refrigeration, plumbing, incinerating, water-heating, cooking, gas, electric, monitoring, measuring, controlling, distributing and other equipment and fixtures, and all renewals and replacements of them, all substitutions for them and all additions and accessions to them, all of which Trustor and Beneficiary hereby also irrevocably declare to be real estate and part of the Real Property.
- (d) **Utilities.** All of Trustor's right, title and interest in and to all wastewater, fresh water and other utilities capacity and facilities (the **"Utilities Capacity"**) available or allocable to the Real Property and Improvements or dedicated to or reserved for them pursuant to any system, program, contract or other arrangement with any public or private utility, and all of Trustor's right, title and interest in and to all related or incidental licenses, rights and interests, whether considered to be real, personal or mixed property, including the right and authority to transfer or relinquish any or all such rights and the right to any credit, refund, reimbursement or rebate for utilities facilities construction or installation or for any reservation fee, standby fee or capital recovery charge promised, provided or paid for by Trustor or any of Trustor's predecessors or Affiliates (defined below) to the full extent now allocated or allocable to the Real Property or Improvements, plus all additional Utilities Capacity, if any, not dedicated or reserved to the Real Property or Improvements but which is now or hereafter owned or controlled by Trustor or by anyone (an **"Affiliate"**, whether a natural person or an entity) who directly or through one or more intermediaries controls, is controlled by or is under common control with Trustor, to the full extent that such additional Utilities Capacity is necessary to allow development, marketing and use of the Real Property or Improvements for their highest and best use.
- (e) **After-acquired Property.** All estate, right, title and interest acquired by Trustor in or to the Real Property, Improvements, Fixtures and Equipment and Utilities Capacity after execution of this Deed of Trust.

- (f) **Appurtenances.** All rights and appurtenances (the “**Appurtenances**”) belonging, incident or appertaining to the Real Property, Improvements, Fixtures and Equipment or Utilities Capacity or any part of them.
- (g) **Oil and Gas.** All of Trustor’s right, title and interest in and to all existing and future minerals, oil, gas and other hydrocarbon substances in, upon, under or through the Real Property.
- (h) **Reversions and Remainders.** All of Trustor’s right, title and interest in and to all rights and estates in reversion or remainder to the Real Property, Improvements, Fixtures and Equipment, Utilities Capacity or Appurtenances or any part of them.
- (i) **Contractual Rights.** All of Trustor’s right, title and interest in and to all contracts (including leases or any other contracts for the use, occupancy, sale or exchange of all or any portion of the Real Property or the Improvements), franchises, licenses and permits whether executed, granted or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to or connected with the development, occupancy, use or sale of the Real Property or the Improvements, whether now or at any time hereafter existing, and all amendments and supplements thereto and renewals and extensions thereof at any time made, and all rebates, refunds, escrow accounts and funds, or deposits and all other sums due or to become due under and pursuant thereto and all powers, privileges, options and Trustor’s other benefits thereunder.
- (j) **Other Estates and Interests.** All of Trustor’s right, title and interest in and to all other estates, easements, interests, licenses, rights, titles, powers or privileges of every kind and character which Trustor now has, or at any time hereafter acquires, in and to any of the foregoing, including the proceeds from condemnation, or threatened condemnation, and the proceeds of any and all insurance covering any part of the foregoing; and all related parts, accessions and accessories to any of the foregoing and all replacements or substitutions therefor, as well as all other Improvements, Fixtures and Equipment, Utilities Capacity and Appurtenances now or hereafter placed thereon or accruing thereto.

**Section 1.2 HABENDUM AND TITLE WARRANTY.** TO HAVE AND TO HOLD the Trust Property, together with every right, privilege, hereditament and appurtenance belonging or appertaining to it, unto the Trustee, its successors or substitutes in the Trust and its assigns, forever. Trustor represents that Trustor is the lawful owner of the Trust Property with full right and authority to mortgage and convey the Trust Property, and that the Trust Property is free and clear of any liens, claims and encumbrances other than the lien, security interests and assignments evidenced hereby, Leases permitted under the Loan Documents, any Permitted Liens (as defined in the Loan Agreement) and those encumbrances and exceptions to title described in Exhibit B attached hereto and hereby made a part hereof (collectively the “**Permitted Encumbrances**”). Trustor hereby binds Trustor and Trustor’s successors and assigns to forever WARRANT and DEFEND the Trust Property and every part thereof unto the Trustee, its successors or substitutes in the Trust, and its assigns, against the claims and demands of every person whomsoever lawfully claiming or to claim it or any part of it; subject, however, to the Permitted Encumbrances.

## ARTICLE 2 THE INDEBTEDNESS SECURED

**Section 2.1 CONVEYANCE IN TRUST TO SECURE DESIGNATED OBLIGATIONS.** This conveyance to the Trustee is in trust to secure all of the following present and future indebtedness and obligations:

- (a) **Notes.** All indebtedness now or hereafter evidenced and to be evidenced by the promissory notes of Trustor payable to the order of Lenders in the face principal amount of each Lender’s respective Construction Loan Commitment Amount, and in the

aggregate face principal amount of Ninety-Five Million and No/100 Dollars (\$95,000,000.00) maturing forty-eight (48) months after the date hereof (with optional extension periods more fully described in the Loan Agreement), issued pursuant to the Loan Agreement, and any and all past, concurrent or future modifications, extensions, renewals, rearrangements, replacements and increases of any such notes (collectively, the "Notes").

- (b) **Loan Agreement.** All obligations and indebtedness of Trustor now or hereafter created or incurred under the Construction Loan Agreement dated concurrently herewith between Trustor, Beneficiary and the Lenders, as the same may be amended, supplemented, restated or replaced from time to time (collectively, the "Loan Agreement").
- (c) **Other Specified Obligations.** All other obligations, if any, described or referred to in any other place in this Deed of Trust.
- (d) **Advances and Other Obligations Pursuant to this Deed of Trust's Provisions.** Any and all sums and the interest which accrues on them as provided in this Deed of Trust which Beneficiary or any Lender may advance or which Trustor may owe Beneficiary or any Lender pursuant to this Deed of Trust on account of Trustor's failure to keep, observe or perform any of Trustor's covenants under this Deed of Trust.
- (e) **Obligations under Loan Documents.** All present and future debts and obligations under or pursuant to (1) any Loan Documents (as defined in the Loan Agreement), including without limitation, any Interest Rate Protection Agreement, or (2) all supplements, amendments, restatements, renewals, extensions, rearrangements, increases, expansions or replacements of them. Notwithstanding the foregoing to the contrary, the Environmental Risk Agreement is one of the Loan Documents, but this Deed of Trust does not secure the obligations of Trustor under the Environmental Risk Agreement.
- (f) **Related Indebtedness.** All other loans or advances not otherwise specifically described in this Section now or hereafter made for the purpose of paying costs of developing, constructing, improving or operating all or any part of the Trust Property.

**Section 2.2 INDEBTEDNESS DEFINED.** The term "Indebtedness" means and includes all of the Notes and all other indebtedness and obligations described or referred to in Section 2.1. The Indebtedness includes interest and other obligations accruing or arising after (a) commencement of any case under any bankruptcy or similar laws by or against Trustor or any other person or entity now or hereafter primarily or secondarily obligated to pay all or any part of the Indebtedness or (b) the obligations of Trustor shall cease to exist by operation of law or for any other reason. The Indebtedness also includes all reasonable attorneys' fees and any other expenses incurred by Beneficiary in enforcing any of the Loan Documents. All liens, assignments and security interests created, represented or continued by this Deed of Trust, both present and future, shall be first, prior and superior to any lien, assignment, security interest, charge, reservation of title or other interest heretofore, concurrently or subsequently suffered or granted by Trustor or Trustor's successors or assigns, except only statutory super priority liens for nondelinquent taxes and those other liens (if any) expressly identified and stated in this Deed of Trust to be senior.

### **ARTICLE 3 SECURITY AGREEMENT**

**Section 3.1 GRANT OF SECURITY INTEREST.** Without limiting any of the provisions of this Deed of Trust, Trustor, as Debtor, and referred to in this Article as "**Debtor**" (whether one or more) hereby grants to Beneficiary, for the ratable benefit of Lenders, as Secured Party, and referred to in this Article as "**Secured Party**" (whether one or more), a security interest in all of Debtor's remedies, powers, privileges, rights, titles and interests (including all of Debtor's power, if any, to pass greater title than it has itself) of

every kind and character now owned or hereafter acquired, created or arising in and to (i) the Trust Property (including both that now and that hereafter existing) to the full extent that the Trust Property may be subject to the Uniform Commercial Code of the state or states where the Trust Property is situated (the "UCC"), (ii) all furniture, furnishings, equipment, accounts, machinery, general intangibles, fixtures, inventory, chattel paper, notes, documents and other personal property owned by Debtor and used, intended or acquired for use, on, or in connection with the use, operation or development of, the Trust Property, or otherwise related to the Trust Property, and all products and proceeds of it, all monetary deposits which Debtor has been required to give to any public or private utility with respect to utility services furnished to the Trust Property, all funds, accounts, instruments, accounts receivable, documents, trademarks, trade names and symbols used in connection therewith, and notes or chattel paper arising from or by virtue of any transactions related to the Trust Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Trust Property, and all guaranties and warranties obtained with respect to all improvements, equipment, furniture, furnishings, personal property and components of any thereof located on or installed at the Trust Property and (iii) the following described property:

- (a) **Contracts.** All contracts now or hereafter entered into by and between Debtor and any general or other contractor or between Debtor and any other party, as well as all right, title and interest of Debtor under any subcontracts, providing for the construction (original, restorative or otherwise) of any improvements to or on any of the Trust Property or the furnishing of any materials, supplies, equipment or labor in connection with any such construction;
- (b) **Plans.** All of the plans, specifications and drawings (including all engineering and other plans and specifications for any drainage, flood control and water quality control facilities, and all plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and architectural and engineering studies and analyses for any structural Improvements) heretofore or hereafter prepared by any architect, engineer or other design professional, in respect of any of the Trust Property;
- (c) **Design, etc. Agreements.** All agreements now or hereafter entered into with any person or entity in respect of architectural, engineering, design, management, development or consulting services rendered or to be rendered in respect of planning, design, inspection or supervision of the construction, management or development of any of the Trust Property;
- (d) **Lender or Investor Commitments.** Any commitment issued by any lender or investor other than Beneficiary to finance or invest in any of the Trust Property; and
- (e) **Bonds.** Any completion bond, performance bond and labor and material payment bond and any other bond relating to the Trust Property or to any contract providing for construction of improvements to any of the Trust Property;

together with all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles related to any of the foregoing Property now owned by Debtor or existing or hereafter acquired, created or arising. All the property described or referred to in this Section is collectively referred to as the "**Collateral**". The Trust Property and the Collateral are collectively referred to as the "**Property**".

**Section 3.2 DEBTOR'S COVENANTS CONCERNING PERSONALTY SUBJECT TO THE UCC.** Debtor covenants and agrees with Secured Party that in addition to and cumulative of any other remedies granted in this Deed of Trust to Secured Party or the Trustee, upon or at any time after the occurrence of an Event of Default (defined in Article 6) which is then continuing:

- (a) Secured Party is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Debtor hereby WAIVING all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell the same for the account of Debtor and to deduct from such sale proceeds all reasonable costs, expenses and liabilities of every character incurred by Secured Party in collecting such sale proceeds and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds on the Indebtedness in such manner as Secured Party may elect. Before any sale, Secured Party may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to such extent as Secured Party may reasonably deem advisable and any sums expended therefor by Secured Party shall be reimbursed by Debtor. Secured Party may take possession of Debtor's premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Debtor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Debtor. All costs, expenses, and liabilities incurred by Secured Party in collecting such sales proceeds, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds as hereinabove provided, shall constitute a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Default Rate (as defined in the Loan Agreement), all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Secured Party pursuant to this Section, Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Secured Party with respect to the Collateral unless such loss is caused by the gross negligence, willful misconduct or bad faith of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.
- (b) Secured Party shall have all the rights of a secured party after default under the Uniform Commercial Code of Delaware, Texas or Utah (as applicable) and in conjunction with, in addition to or in substitution for those rights and remedies:
- (i) Secured Party may require Debtor to assemble the Collateral and make it available at a place Secured Party designates which is mutually convenient to allow Secured Party to take possession or dispose of the Collateral; and
- (ii) it shall not be necessary that Secured Party take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale.

**Section 3.3 UCC RIGHTS ARE NOT EXCLUSIVE.** Should Secured Party elect to exercise its rights under the UCC as to part of the personal property or fixtures described in this Deed of Trust, such election shall not preclude Secured Party or the Trustee from exercising any or all of the rights and remedies granted by the other Articles of this Deed of Trust as to the remaining personal property or fixtures.

**Section 3.4 DEED OF TRUST IS ALSO FINANCING STATEMENT.** Secured Party may, at its election, at any time after delivery of this Deed of Trust, file an original of this Deed of Trust as a financing statement or sign one or more copies of this Deed of Trust to use as a UCC financing statement.

Secured Party's signature may be placed between the last sentence of this Deed of Trust and Debtor's acknowledgment or may follow Debtor's acknowledgment. Secured Party's signature need not be acknowledged and is not necessary to the effectiveness of this Deed of Trust as a deed of trust, mortgage, assignment, pledge, security agreement or (unless otherwise required by applicable law) as a financing statement.

**Section 3.5 NO OTHER FINANCING STATEMENTS ON THE COLLATERAL.** So long as any amount remains unpaid on the Indebtedness, Debtor will not execute and there will not be filed in any public office any financing statements affecting the Collateral other than financing statements in favor of Secured Party under this Deed of Trust, unless prior written specific consent and approval of Secured Party shall have been first obtained.

**Section 3.6 SECURED PARTY MAY FILE FINANCING AND CONTINUATION STATEMENTS.** Secured Party is authorized to file this Deed of Trust, a financing statement or statements and one or more continuation statements in any jurisdiction where Secured Party deems it necessary, and at Secured Party's request, Debtor will join Secured Party in executing one or more financing statements, continuation statements or both pursuant to the UCC, in form satisfactory to Secured Party, and will pay the costs of filing or recording them, in all public offices at any time and from time to time whenever filing or recording of this Deed of Trust, any financing statement or any continuation statement is deemed reasonable by Secured Party or its counsel to be necessary or desirable. Any initial financing statements and amendments thereto may (a) indicate the personal property or assigned rights: (i) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the personal property or assigned rights falls within the scope of Article 9a of the Uniform Commercial Code of the State of Utah or such jurisdiction, 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 Article 9a of the Uniform Commercial Code of the State of Utah, or such other jurisdiction, for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor. Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor's rights under Section 9a-509 of the Utah Uniform Commercial Code.

**Section 3.7 FIXTURES.** Certain of the Collateral is or will become "fixtures" (as that term is defined in the UCC) on the Real Property, and when this Deed of Trust is filed for record in the real estate records of the county where such fixtures are situated, it shall also automatically operate as a financing statement upon such of the Collateral which is or may become fixtures.

**Section 3.8 ASSIGNMENT OF NON-UCC PERSONAL PROPERTY.** To the extent that any of the Collateral is not subject to the UCC of the state or states where it is situated, Debtor hereby assigns to Secured Party all of Debtor's right, title and interest in the Collateral to secure the Indebtedness. Release of the lien of this Deed of Trust shall automatically terminate this assignment.

**Section 3.9 DEBTOR'S WARRANTIES CONCERNING COLLATERAL.** Debtor warrants and represents to Secured Party that Debtor is the legal and equitable owner and holder of the Collateral free of any adverse claim and security interest or other encumbrance, except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Deed of Trust. Debtor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its proceeds or any interest in either. Debtor also warrants and represents that Debtor has not heretofore signed any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed by Debtor is now on file in any public office except only those statements (if any) true and correct copies of which Debtor has actually delivered to Secured Party and which Secured Party has consented to in writing.

**Section 3.10 STANDARD OF CARE.** Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself conclusively be deemed a failure to exercise reasonable care, and no failure of Secured Party to take any action not so requested by Debtor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

**Section 3.11 CHANGE TERMS, RELEASE COLLATERAL.** Secured Party and, to the extent required by the applicable terms of the Loan Agreement, the Lenders, may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Debtor or discharging or otherwise affecting any liability of Debtor. Secured Party shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

#### **ARTICLE 4 TRUSTOR'S COVENANTS**

**Section 4.1 COVENANTS FOR THE BENEFIT OF BENEFICIARY.** To better secure the Indebtedness, Trustor covenants and agrees with the Trustee and his substitutes and successors in the Trust, for the use and benefit of Beneficiary and with the intent that the Trustee, Beneficiary or both may enforce these covenants, that:

- (a) **Liens, etc. and Remedies Cumulative.** No lien, assignment, security interest, guaranty, right or remedy in favor of Beneficiary granted in, secured by or ancillary to this Deed of Trust shall be considered as exclusive, but each shall be cumulative of all others which Beneficiary or the Trustee may now or hereafter have.
- (b) **Trustor Waives Marshalling of Assets and Sale in Inverse Order of Alienation Rights.** Trustor hereby irrevocably WAIVES all rights of marshalling of assets or sale in inverse order of alienation in the event of foreclosure of this or any other security.
- (c) **Trustor Will Correct Title Defects.** If at any future time any defect should be found to exist in the title to any of the Property, Trustor agrees to promptly commence and thereafter diligently proceed to cure the defect and defend the title. If any lien or encumbrance against the Property other than the Permitted Encumbrances, junior, equal or superior in rank or priority to the lien of this Deed of Trust should be discovered or arise at any time in the future then, unless Beneficiary is the only holder of it, or Beneficiary has given specific prior written consent to it, Trustor agrees to promptly discharge and remove it from the Trust Property; provided, however, that in the case of any such involuntary lien or encumbrance, Trustor may provide a bond in form, substance and amount satisfactory to Beneficiary (but not greater than 150% of the amount of the claim) covering and affecting any such lien or encumbrance in lieu of discharging and removing such involuntary lien or encumbrance, but only so long as no attempt shall be made to foreclose any such involuntary lien or encumbrance. Trustor will notify Beneficiary in writing within ten (10) days of the time that Trustor becomes aware of the filing of any mortgage, lien, security interest, financing statement or other security device whatsoever against the Property.
- (d) **Insurance Requirements.** At all times before the final termination of this Deed of Trust, Trustor agrees to provide, maintain and keep in force the following insurance policies and coverages:
  - (i) **Casualty Coverage after Construction Completion.** A "Special Cause of Loss" insurance on the Improvements in an amount not less than the full insurable value on a replacement cost basis of the insured Improvements and personal property related thereto owned by Debtor. Such policy shall not contain an exclusion for terrorist



losses, and shall cover and insure the Property against loss by fire, storm, gas explosion (if gas is used on the Property) and any other contemplated risks, including flood and mudslide, and in such amounts as Beneficiary reasonably requires from time to time.

(ii) **Coverage during Construction.** If all or any portion of the Property consists of improvements under construction: (i) a builder's all-risk form insurance policy on a completed value, non-reporting form, insuring the Property against all risks typically covered under a standard extended coverage endorsement, except those permitted by Beneficiary in writing to be excluded from coverage thereunder, and an all-risk policy of insurance covering loss of future earnings and/or rents from the Property in the event the Property is not ready or available for use or occupancy due to casualty, damage or destruction required to be covered by such builder's all-risk insurance policy, (ii) policies of insurance to be carried by each contractor performing work in connection with the Property covering worker's compensation, employers' liability, commercial general liability and comprehensive automobile liability, including a broad form umbrella/excess liability insurance policy and (iii) policies of professional liability insurance to be carried by each design professional performing work in connection with the Property covering each such party against claims for actual or alleged errors, omissions or negligent acts in the performance of their respective services rendered in respect of the Property.

(iii) **Liability Insurance.** Policies of insurance evidencing bodily injury, death or property damage liability coverages in amounts not less than \$2,000,000 (combined single limit), and an excess/umbrella liability coverage in an amount not less than \$5,000,000 shall be in effect with respect to Trustor. Such policies must be written on an occurrence basis so as to provide blanket contractual liability, broad form property damage coverage, and coverage for products and completed operations.

(iv) **Other Insurance Required.** Such other insurance against other insurable hazards, risks or casualties which at the time are commonly insured against in the case of owners and premises similarly situated, due regard being given to the type of the Property, its construction, location, use and occupancy, which may include, without limitation, errors and omissions insurance with respect to the contractors, architects and engineers, rent abatement and/or business loss.

(e) **Insurance Companies, Policies, Endorsements and Premium Payments.** Trustor agrees that all required insurance will be written on forms reasonably acceptable to Beneficiary and by companies having a "A" VII or better by A.M. Best Co., in Best's Rating Guide and which are otherwise reasonably acceptable to Beneficiary, and that such insurance (other than third party liability insurance) shall be written or endorsed to name Beneficiary as a lender or Beneficiary loss payee and that with respect to any liability coverage, Beneficiary be named an additional insured. Either original policies or certificates accompanied by copies of such policies evidencing such insurance shall be delivered by Trustor to Beneficiary and held by Beneficiary. Each such policy shall expressly prohibit cancellation or modification of insurance without thirty (30) days' written notice to Beneficiary. Trustor agrees to furnish due proof of payment of the premiums for all such insurance for Beneficiary promptly after each such payment is made and in any case at least fifteen (15) days before payment becomes delinquent.

(f) **Beneficiary's Rights to Collect Insurance Proceeds.** Subject to the terms of this Deed of Trust, Trustor hereby assigns to Beneficiary, for the ratable benefit of Lenders, the exclusive right to collect any and all monies that may become payable under any insurance policies covering any part of the Property, or any risk to or about the Property. Beneficiary shall fully cooperate with and assist Trustor with respect to the filing of insurance claims and the collection of insurance proceeds so long as Beneficiary reasonably concurs with Trustor's actions with respect thereto and all reasonable costs

incurred by Beneficiary in connection with such cooperation and participation are promptly paid or reimbursed by Trustor upon the request of Beneficiary.

- (g) **Effects of Foreclosure on Insurance Policies and Post-foreclosure Event Claims.** Foreclosure of this Deed of Trust shall, provided that Beneficiary has elected to include personal property in such sale under the provisions of Utah law, automatically constitute foreclosure upon all policies of insurance insuring any part of or risk to the Property and all claims thereunder arising from post-foreclosure events. The successful bidder or bidders for the Property at foreclosure, as their respective interests may appear, shall automatically accede to all of Trustor's rights in, under and to such policies and all post-foreclosure event claims, and such bidder(s) shall be named as insured(s) on request, whether or not the trustee's deed or bill of sale to any such successful bidder mentions insurance.
- (h) **Application of Insurance Proceeds Collected Before Foreclosure.** In the event of loss or destruction of all or any portion of the Property, Trustor may, at its option and so long as all Guarantors remain liable for the Indebtedness to the extent required under their respective Guaranty agreements, cause Beneficiary to either (i) apply all or any portion of any proceeds that are paid under any insurance policies after any such event of loss or destruction toward the payment of the Indebtedness, whether the same be then due or not, such application to be made in such manner and order as Beneficiary shall elect, and any balance of insurance proceeds remaining after such application shall be delivered to Trustor, or (ii) disburse to Trustor any insurance proceeds received to be used by Trustor solely for the repair, rebuilding and restoration (hereinafter collectively referred to as the "**Restoration Work**") of the Property; provided, however, that the disbursement to Trustor of such insurance proceeds shall be and is hereby made subject to compliance by Trustor with the following terms, conditions and procedures (hereinafter collectively referred to as the "**Disbursement Procedures**"), to wit:
- (i) The actual disbursement of such insurance proceeds shall be made in the same manner and upon the same terms and conditions as provided for in the Loan Agreement for disbursement of loan proceeds;
- (ii) If the estimated cost (as certified to Beneficiary by the restoration architect) of the Restoration Work exceeds the proceeds of the insurance available for application thereto, then an amount of money equal to such excess shall be escrowed with Beneficiary prior to the commencement of the Restoration Work to be used solely for payment of the costs of such Restoration Work, and any amount so escrowed with Beneficiary shall be disbursed by Beneficiary in accordance with the Disbursement Procedures prior to the disbursement of any of such insurance proceeds;
- (iii) Trustor will continue to be able, in the reasonable judgment of Beneficiary, to complete construction of the Improvements on or before the date of completion required by the terms of the Loan Agreement as the same may be modified or extended with the prior written consent and approval of Beneficiary;
- (iv) No Event of Default or Default (as defined in the Loan Agreement) shall have occurred which is then continuing; and
- (v) If the entire principal portion of any of the Notes shall become due at any time for any reason, and if at that time any amounts are held by Beneficiary pursuant to any subparagraph of this paragraph, then Beneficiary is hereby authorized to apply such amounts on any amounts due pursuant to the Notes or any other Loan Documents.
- (i) **Flood Insurance Requirements.** No portion of the Property is located within an area that has been designated or identified as an area having special flood hazards or flood

prone characteristics (hereinafter referred to as the "**Flood Plain**") by the Secretary of Housing and Urban Development, or by such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1968, as such act may from time to time be amended and in effect, or pursuant to any other national or state program of flood insurance, or in the alternative, if the Property, or any part thereof, does lie within the Flood Plain or should the Property, or any part thereof, be hereafter so designated as being within the Flood Plain: (i) Trustor will immediately notify Beneficiary in writing, and (ii) Trustor will maintain, at all times that any Indebtedness is outstanding, flood insurance with respect to the Property in amounts not less than the maximum limit of insurance coverage then available with respect to the Property pursuant to any and all national and state flood insurance program then in effect or the amount of the Indebtedness, whichever is less, and cause all insurance so carried to be made payable to Beneficiary pursuant to a standard Beneficiary clause, without contribution, and cause copies of all such policies to be delivered to Beneficiary.

- (j) **Application of Insurance Proceeds Collected After Foreclosure.** Unless Beneficiary or Beneficiary's representative reserves at the foreclosure sale the right to collect any uncollected insurance proceeds recoverable for events occurring before foreclosure (in which event the successful bidder at the sale, if not Beneficiary, shall have no interest in such proceeds and Beneficiary shall apply them, if and when collected, to the Indebtedness in such order and manner as Beneficiary shall then elect and remit any remaining balance to Trustor or to such other person or entity as is legally entitled to them), all proceeds of all such insurance which are not so reserved by Beneficiary at the foreclosure sale and are not actually received by Beneficiary until after foreclosure shall be the property of the successful bidder or bidders at foreclosure, as their interests may appear, and Trustor shall have no interest in them and shall receive no credit for them.
- (k) **Beneficiary Not Obligated to Require, Provide or Evaluate Insurance.** Beneficiary shall have no duty to Trustor or anyone else to either require or provide any insurance or to determine the adequacy or disclose any inadequacy of any insurance.
- (l) **Beneficiary May Elect to Insure Only its Own Interests.** If Beneficiary elects at any time or for any reason to purchase insurance relating to the Property, it shall have no obligation to cause Trustor or anyone else to be named as an insured, to cause Trustor's or anyone else's interests to be insured or protected or to inform Trustor or anyone else that his or its interests are uninsured or underinsured.
- (m) **Trustor Will Correct Defects, Provide Further Assurances and Papers.** Upon Beneficiary's reasonable request, Trustor will promptly correct any defect which hereafter may be discovered in the text, execution or acknowledgment of the Notes, this Deed of Trust or any Loan Document executed by Trustor or in the description of any of the Property, and will deliver such further assurances and execute such additional papers as in the opinion of Beneficiary or its legal counsel shall be reasonably necessary, proper or appropriate (1) to better convey and assign to the Trustee and Beneficiary all the Property intended or promised to be conveyed or assigned or (2) to properly evidence the intended or promised security for the Indebtedness.
- (n) **Trustor Will Pay Taxes and Impositions and Furnish Receipts.** Trustor agrees at its own cost and expense to pay and discharge (or cause to be paid and discharged) all other taxes, assessments, maintenance charges, permit fees, impact fees, development fees, capital recovery charges, utility reservation and standby fees and all other similar and dissimilar impositions of every kind and character ("**Impositions**") charged, levied, assessed or imposed against any interest in any of the Property, before they become delinquent; provided, however, that Trustor shall have the right to actively contest such Impositions in good faith if Trustor shall establish sufficient reserves to pay any such

contested Impositions that are later determined to be properly owed by Trustor; and provided, further, that no attempts shall be made to foreclose any lien for such Impositions. Trustor agrees to furnish due proof of such payment to Beneficiary promptly after payment and before delinquency. Trustor also agrees to hereafter file all income, franchise and other tax returns within the time frames that they are required to be filed and pay all taxes shown thereon to be due, including interest and penalties, except for those taxes which are being diligently contested in good faith and for payment of which adequate reserves have been set aside by Trustor and provided, further, that no attempts shall be made to foreclose any lien for such Impositions.

- (o) **Trustor to Pay Monthly Tax and Insurance Deposits on Request.** After Beneficiary has requested that such payments be made upon an Event of Default that is then continuing, Trustor agrees to pay the monthly tax and insurance premium deposits required by Article 8 and to provide Beneficiary any additional sums needed to pay the taxes and insurance premiums for the Property when due.
- (p) **Trustor Won't Grant Easements, Etc.** Except for Permitted Encumbrances, Trustor shall not grant, join in or consent to any lien, security interest, easement, license or other interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld or delayed).
- (q) **Trustor Will Protect Property from Mechanic's Liens.** Trustor agrees to promptly pay all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable; provided, however, that Trustor shall have the right to actively contest any such bills in good faith if Trustor shall either (1) provide a bond in form, substance and amount satisfactory to Beneficiary covering and affecting any lien for any such bills, (2) establish a cash reserve therefor (which Beneficiary may require to be deposited with it) in an amount reasonably satisfactory to Beneficiary, and provided, further, that no attempt shall be made to foreclose any such lien, or (3) provide alternate security in accordance with Title 38 Chapter 1a of *Utah Code Annotated*. Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.
- (r) **Utah Construction Registry.**
  - (i) Subject subsection (q) above, Trustor will pay prior to delinquency all bills for labor and materials incurred in connection with the Property and to prevent the fixing of any lien against any part of the Property, even if it is inferior to this Security Instrument, for any such bill which may be legally due and payable. Upon Beneficiary's request, Trustor agrees to furnish due proof of such payment to Beneficiary after payment and before delinquency.
  - (ii) 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. Trustor shall also provide to Beneficiary copies of all preliminary notices or other notices filed by any contractor, subcontractor or supplier with respect to the Property that are included in the State Construction Registry and/or received by Trustor.

(iii) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry by reviewing the Title Policy but not otherwise 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 (which shall include the Title Policy) or for which the Beneficiary's title insurer has provided affirmative coverage acceptable to Beneficiary pursuant to the Title Policy. Trustor further represents and warrants that to its knowledge 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.

(iv) 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 Security Instrument, 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 Annotated* § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Security Instrument.

(v) 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.

(vi) 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 Security Instrument 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 ALTA Mortgagee's Title Insurance Policy.

(vii) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Security Instrument 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, if any, 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.

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

- (s) **Trustor Will Maintain Property and Won't Remove Improvements.** Trustor agrees to keep, preserve, and maintain all elements of the Property in a good state of repair and condition. Trustor will not tear down, damage or attempt to remove, demolish or materially alter or enlarge any elements of the Property, or construct any new Improvements (except for those improvements to the Trust Property contemplated under the Loan Agreement), without Beneficiary's prior written consent. Except for Permitted Encumbrances, Trustor shall not grant, join in or consent to any lien, security interest, easement, license or other interest covering or affecting all or any part of the Property or initiate, join in and consent to the change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof without the prior written consent of Beneficiary (which consent shall not be unreasonably withheld or delayed).
- (t) **Beneficiary's Inspection and Discussion Rights.** Trustor agrees to permit Beneficiary, Lenders, and their respective agents, representatives and employees at all reasonable times to go upon, examine, inspect and remain on the Trust Property, to assist and cooperate, and require Trustor's employees, agents and contractors to cooperate, with Beneficiary and Lenders and to furnish to Beneficiary on reasonable request all pertinent information concerning the physical and economic condition, development and operation of the Trust Property. Beneficiary may discuss the Trust Property directly with any of Trustor's officers and managers.
- (u) **Beneficiary May Grant Releases without Impairing Other Collateral or Rights.** At all times, and subject to any applicable terms of the Loan Agreement restricting Beneficiary's right to do so without the consent of all or the requisite percentage of Lenders, Beneficiary shall have the right to release any part of the Property or any other security from this Deed of Trust or any other security instrument or device without releasing any other part of the Property or any other security, without affecting Beneficiary's lien, assignment or security interest as to any property or rights not released and without affecting or impairing the liability of any maker, guarantor or surety on the Notes or other obligation.
- (v) **Trustor Will Notify Beneficiary of Legal Proceedings and Defend Lien; Beneficiary May Act if Trustor Doesn't.** Trustor will notify Beneficiary in writing promptly of the commencement of any legal proceedings affecting any part of the Property and will engage and pay legal counsel to answer and to defend and preserve Beneficiary's liens, rights and interests and their rank and priority. If Trustor fails or refuses to promptly begin or to diligently continue any such acts, then Beneficiary may elect to do so and may take such action in behalf of Trustor, in Trustor's name and at Trustor's expense.
- (w) **Limited Liability Company Existence.** Trustor agrees to maintain its existence as a Delaware limited liability company and to obtain and maintain all franchises and permits necessary for it continuously to be in good standing in the State of Texas, the State of

Utah, and all other relevant jurisdictions with full power and authority to conduct its regular business and to own and operate the Trust Property until final termination of this Deed of Trust.

- (x) **Purchase Money Security Interest.** Trustor agrees that to the full extent that any of the proceeds of the Notes have been or are paid or applied towards the purchase of any real or personal property, it shall be conclusively presumed to have been done at Trustor's special instance and request, and Trustor hereby acknowledges and recognizes the existence of a purchase money security interest in favor of Beneficiary against such property, as security for the Notes in addition to and cumulative of the lien, assignments and security interest of this Deed of Trust. Foreclosure under this Deed of Trust shall also constitute foreclosure of said purchase money security interest.
- (y) **Legal Compliance, Governmental Notices.** Trustor will operate the Property and conduct any construction, repairs and renovation of all or any portion of the Real Property in full compliance with all requirements of governmental and quasi-governmental authorities having jurisdiction over Trustor or the Property and will comply with and punctually perform all of the covenants, agreements and obligations imposed upon it or the Property.
- (z) **Perform Other Obligations.** Trustor will pay punctually and discharge when due, or renew or extend, any indebtedness incurred by it and will discharge, perform and observe the covenants, provisions and conditions to be performed, discharged and observed on the part of Trustor in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any mortgage, pledge or lien existing at any time upon any of the property or assets of Trustor; provided, however, that nothing contained in this subsection shall require Trustor to pay, discharge, renew or extend any such indebtedness or to discharge, perform or observe any such covenants, provisions and conditions so long as Trustor shall be diligently and in good faith contesting any claims which may be asserted against it with respect to any such indebtedness or any such covenants, provisions and conditions, shall set aside on its books reserves with respect thereto deemed adequate by Beneficiary, and provided, further, that no attempts shall be made to foreclose any liens related thereto.
- (aa) **Notice of Condemnation and Other Proceedings.** Promptly upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Trustor will notify Beneficiary in writing of the pendency of such proceedings. Trustor shall diligently prosecute any such proceedings and shall be responsible for payment of all expenses incurred by it, including its attorneys' fees, in connection with such proceedings. Beneficiary may participate in any such proceedings, and Trustor shall from time to time deliver to Beneficiary all instruments requested by it to permit such participation. Trustor shall consult with Beneficiary, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings, and the fees and expenses of Beneficiary's attorneys and experts in connection therewith shall be paid by Trustor.
- (bb) **Maintenance.** Trustor will, or will cause its managers to, do and perform any and all acts and things relating to the management, upkeep and operation of the Property as are customarily performed by managing agents and owners of properties comparable to the Property, similarly situated, and shall otherwise operate the Property, or cause the Property to be operated, in an efficient manner and in accordance with all legal requirements and the terms and conditions of this Deed of Trust and the other Loan Documents.
- (cc) **Water Rights.**

(i) Trustor shall diligently comply with all deadlines affecting the Water Rights (as defined below) imposed by law or regulation or any governmental authority, including but not limited to the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Utah, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Trustor or all or any portion of the real property subject to this Deed of Trust.

(ii) 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.

(iii) Trustor shall promptly provide 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.

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

(v) 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.

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



## ARTICLE 5 TRUSTOR'S REPRESENTATIONS AND WARRANTIES

To induce Beneficiary to extend financial accommodations, including credit under the Notes, Trustor makes the warranties and representations set forth in this Article.

**Section 5.1 TRUSTOR SOLVENT.** Trustor is now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or, to Trustor's knowledge, threatened against Trustor. Trustor's liabilities and obligations under this Deed of Trust and all other Loan Documents do not and will not render Trustor insolvent, cause Trustor's liabilities to exceed Trustor's assets or leave Trustor with too little capital to properly conduct all of its business as contemplated to be conducted.

**Section 5.2 NO FALSE REPRESENTATION.** To Trustor's actual knowledge, no representation or warranty contained in this Deed of Trust or any other Loan Document executed by Trustor and no statement contained in any certificate, schedule, list, financial statement or other papers furnished to Beneficiary by or on behalf of Trustor contains, or will contain, any untrue statement of material fact, or omits, or will omit, to state a material fact necessary to make the statements contained herein or therein not misleading in any material respect.

**Section 5.3 TITLE.** Trustor has good and indefeasible title to the Property, free and clear of any lien or security interest except only for liens and security interests against the Trust Property which are expressly permitted by this Deed of Trust. The lien and security interest of this Deed of Trust will constitute a valid and perfected first and prior liens and security interests on the Property, subject to no other liens, security interests or charges whatsoever.

**Section 5.4 TRUSTOR HAS ALL NECESSARY RIGHTS.** All easements, rights-of-way, utilities and other rights necessary to maintain and operate the Property as a multi-family residential project with related facilities and amenities have been or will be obtained and shall remain in full force and effect.

**Section 5.5 LEGAL REQUIREMENTS.** To the best of Trustor's knowledge, Trustor and the Property are in compliance with all applicable legal requirements in all material respects.

## ARTICLE 6 DEFAULTS AND REMEDIES

**Section 6.1 RELEASE FOR FULL PAYMENT AND PERFORMANCE.** Subject to the automatic reinstatement provisions of Section 9.19 below, this Deed of Trust shall terminate and be of no further force or effect (and shall be released on Trustor's written request and at a reasonable cost and expense to Trustor) upon full payment of the Indebtedness and complete performance of all of the obligations of Trustor under the Loan Documents.

**Section 6.2 EVENTS OF DEFAULT.** The occurrence of any Event of Default (herein so called) under the terms of the Loan Agreement shall constitute an Event of Default under this Deed of Trust.

**Section 6.3 REMEDIES.** Upon the occurrence of any Event of Default, and at any time thereafter if such Event of Default is continuing, and subject to any applicable terms of the Loan Agreement requiring Beneficiary to take any action at the request of Majority Lenders or to receive the consent of Majority Lenders, Beneficiary may take any one or more of the following actions:

- (a) **Indebtedness Due.** All Indebtedness in its entirety shall, at the option of Beneficiary, become immediately due and payable without presentment, demand, notice of intention to accelerate or notice of acceleration, or other notice of any kind, all of which are hereby expressly **WAIVED**, and the liens and security interests created or intended to be created hereby shall be subject to foreclosure, repossession and sale in any manner provided for herein or provided for by law, as Beneficiary may elect, and Beneficiary may exercise any

and all of its rights under this Deed of Trust, the Notes and any of the other Loan Documents.

- (b) **Legal Proceedings.** Trustee and Beneficiary shall have the right and power to proceed by suit or suits in equity or at law, whether for the specific performance of any covenant or agreement of Trustor contained herein or in aid of the execution of the powers herein granted, or for foreclosure or the sale of the Property or any part thereof under the judgment or decree of any court of competent jurisdiction, or for the enforcement of any other appropriate legal or equitable remedy.
- (c) **Trustee's Sale.** It shall be the duty of the Trustee and of his successors and substitutes in the Trust, on Beneficiary's request (which request is hereby presumed) to enforce the Trust by selling the Trust Property as is provided in this Deed of Trust.

**Section 6.4 POWER OF SALE.** Trustee may invoke the power of sale by recording and otherwise giving all written notices required by law to Trustee of an event of default and Beneficiary's election to cause the Trust Property to be sold. Trustee shall record a Notice of Default and Election to Sell with the Office of the County Recorder of Salt Lake County, Utah. Beneficiary shall deposit with Trustee this Deed of Trust and such additional instruments and documents as Trustee may require under applicable law. Trustee shall publish and post a notice for sale for the time and in the manner provided by applicable law and shall mail copies of the notice of sale in the manner prescribed by applicable law to Trustor and to other persons prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Trustor, shall sell the Trust Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone the sale of any parcel of the Trust Property by public announcement at the time and place of any previously scheduled 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 Ann. § 57-1-27.

Any person, including Trustor or Beneficiary, or its designee, may purchase the Trust Property at the sale. Upon any sale, Trustee will execute and deliver to the purchaser or purchasers a Trustee's deed, in accordance with Utah Code Ann. § 57-1-28, but without any covenant or warranty, express or implied, and the recitals in the Trustee's deed showing that the sale was conducted in compliance with all the requirements of law shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

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

For purposes of Utah Code Ann. § 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 Trust 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 the Note in its sole 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 Trust Property pursuant to this Deed of Trust.

Trustor agrees to pay any deficiency arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any trustee's sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Ann. § 57-1-32 or other applicable law. Trustor agrees for purposes of Utah Code Ann. § 57-1-32 that the value of the Trust Property as determined and set forth in an FIRREA appraisal of the Trust Property as obtained by Beneficiary on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Trust Property for purposes of Utah Code Ann. § 57-1-32.

If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Trust Property, reinstates this Deed of Trust with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. § 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.

Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Ann. § 78B-6-901 (formerly Utah Code Ann. § 78-37-1) and Utah Code Ann. § 57-1-32 and any successor or replacement statute or any similar laws or benefits.

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.

Trustee shall apply the proceeds of the sale in the following order: (i) to all expenses of the sale, including, but not limited to, trustee's fees and attorneys' fees actually incurred not to exceed the amount which may be provided for in the Deed of Trust; (ii) to all sums secured by this Deed of Trust; and (iii) any excess to the persons or persons legally entitled to it, or Trustee, in Trustee's discretion, may deposit any excess with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Ann. § 57-1-29 or any successor provision of law

**Section 6.5 BENEFICIARY MAY REQUIRE ABANDONMENT AND RECOMMENCEMENT OF SALE.** If the Trustee or his substitute or successor should commence the sale, Beneficiary may at any time before the sale is completed direct the Trustee to abandon the sale, and may at any time or times thereafter direct the Trustee to again commence foreclosure; or, irrespective of whether foreclosure is commenced by the Trustee, Beneficiary may at any time after an Event of Default institute suit for collection of the Indebtedness or foreclosure of this Deed of Trust. If Beneficiary should institute suit for collection of the Indebtedness or foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of final judgment dismiss it and require the Trustee to sell the Trust Property in accordance with the provisions of this Deed of Trust.

**Section 6.6 MULTIPLE SALES; DEED OF TRUST CONTINUES IN EFFECT.** If permitted by applicable law, no single sale or series of sales by the Trustee or by any substitute or successor and no judicial foreclosure shall extinguish the lien or exhaust the power of sale under this Deed of Trust except with respect to the items of property sold, nor shall it extinguish, terminate or impair Trustor's contractual obligations under this Deed of Trust, but such lien and power shall exist for so long as, and may be exercised in any manner by law or in this Deed of Trust provided as often as, the circumstances require to give Beneficiary full relief under this Deed of Trust, and such contractual obligations shall continue in full force and effect until final termination of this Deed of Trust.

**Section 6.7 REINSTATEMENT.** If Trustor, Trustor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Trust Property, reinstates this Deed of Trust with three (3) months of the recordation of a notice of default in accordance with Utah Code Ann. § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Ann. § 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.

**Section 6.8 SUCCESSOR OR SUBSTITUTE TRUSTEE.** In case of absence, death, inability, refusal or failure of the Trustee in this Deed of Trust named to act, or in case he should resign (and he is hereby authorized to resign without notice to or consent of Trustor), or if Beneficiary shall desire, with or without cause, to replace the Trustee in this Deed of Trust named, or to replace any successor or substitute previously named, Beneficiary or any agent or attorney-in-fact for Beneficiary may name, constitute and appoint a successor and substitute trustee (or another one) without other formality than an appointment and designation in writing, which need not be acknowledged, filed or recorded to be effective, except only in those circumstances, if any, where acknowledgment, filing and/or recording is required by applicable law and such law also precludes Trustor from effectively waiving such requirement. Upon such appointment, this conveyance shall automatically vest in such substitute trustee, as Trustee, the estate in and title to all of the Trust Property, and such substitute Trustee so appointed and designated shall thereupon hold, possess and exercise all the title, rights, powers and duties in this Deed of Trust conferred on the Trustee named and any previous successor or substitute Trustee, and his conveyance to the purchaser at any such sale shall be equally valid and effective as if made by the Trustee named in this Deed of Trust. Such right to appoint a substitute Trustee shall exist and may be exercised as often and whenever from any of said causes, or without cause, as aforesaid, Beneficiary or Beneficiary's agent or attorney-in-fact elects to exercise it.

**Section 6.9 RIGHT TO RECEIVER.** Upon the occurrence of an Event of Default or at any time after commencement of a Trustee's foreclosure sale or any legal proceedings under this Deed of Trust, Beneficiary may, in accordance with Beneficiary's right under Utah Code Ann. § 57-1-23, or other applicable law, including the Utah Uniform Commercial Real Estate Receivership Act, and at Beneficiary's election and by or through the Trustee or otherwise, make application to a court of competent jurisdiction for appointment of a receiver of the Property, as a matter of strict right, without notice to Trustor and without regard to the adequacy of the value of the Property for the repayment of the Indebtedness, and Trustor hereby irrevocably consents to such an appointment. Any receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to possess, rent, maintain, repair and operate the Property upon such terms and conditions as may be approved by the court, and shall apply the rents realized in the same manner and order as foreclosure proceeds in accordance with Section 6.4.

**Section 6.10 TENANTS AT WILL.** Trustor agrees for itself and its heirs, legal representatives, successors and assigns, that if any of them shall hold possession of the Property or any part thereof subsequent to foreclosure hereunder, Trustor, or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for rental on said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

## **ARTICLE 7 BENEFICIARY'S RIGHT TO PERFORM TRUSTOR'S OBLIGATIONS**

**Section 7.1 BENEFICIARY MAY ELECT TO PERFORM DEFAULTED OBLIGATIONS.** If Trustor should fail to comply with any of its other agreements, covenants or obligations under this Deed of Trust, the Notes, or any other Loan Document executed by Trustor, and if such failure has ripened into an Event of Default which is then continuing, then Beneficiary may perform them or cause them to be performed for Trustor's account and at Trustor's expense, but shall have no obligation to perform any of them or cause them to be performed. With respect to Trustor's failure to maintain or cause to be maintained the

insurance coverage required hereby, however, Beneficiary itself may purchase or secure such insurance coverage for the Trust Property prior to providing Trustor with any notice of and opportunity to cure or remedy such failure. Any and all expenses thus incurred or paid by Beneficiary under the provisions of this paragraph shall be Trustor's obligations to Beneficiary due and payable on demand, and each shall bear interest from the date Beneficiary pays it until the date Trustor repays it to Beneficiary, at the Default Rate. Upon making any such payment or incurring any such expense, Beneficiary, for the ratable benefit of Lenders, shall be fully and automatically subrogated to all of the rights of the person, corporation or body politic receiving such payment. Any amounts owing by Trustor to Beneficiary pursuant to this or any other provision of this Deed of Trust shall automatically and without notice be and become a part of the Indebtedness and shall be secured by this and all other instruments securing the Indebtedness. The amount and nature of any such expense and the time when it was paid shall be fully established by the affidavit of Beneficiary or any of Beneficiary's officers or agents or by the affidavit of any original, substitute or successor Trustee acting under this Deed of Trust. Without notice to Trustor or any other person or entity, the Default Rate shall automatically fluctuate upward and downward as and in any amount by which such rate changes as provided for in the Loan Agreement.

**Section 7.2 EXERCISE OF RIGHTS IS NOT WAIVER OR CURE OF DEFAULT.** The exercise of the privileges granted to Beneficiary in this Article shall in no event be considered or constitute a cure of the default or a waiver of Beneficiary's right at any time after an Event of Default to declare the Indebtedness to be at once due and payable, but is cumulative of such right and of all other rights given by this Deed of Trust, the Notes and the Loan Documents and of all rights given Beneficiary by law.

## **ARTICLE 8 TAX AND INSURANCE DEPOSITS**

In addition to the Indebtedness payments, upon the occurrence of an Event of Default which is then continuing, Trustor agrees that Trustor will deposit with Beneficiary each month an amount equal to one-twelfth (1/12) of the aggregate of (i) the next succeeding premiums (or payments in respect of them, if premiums are financed) on all insurance policies which Trustor is required by or pursuant to this Deed of Trust to maintain on the Property, and (ii) the amount of the next succeeding annual tax payments, assessment installments, maintenance charges and other Impositions to become due and payable with respect to the Property, as reasonably estimated by Beneficiary, plus, with the first of such monthly deposits, an additional month's share (a twelfth) of such premiums and taxes for each month less than twelve remaining before the next payment thereof falls due. If Trustor has made deposits as contemplated in this Article 8, then at least fifteen (15) days before the date on which any such insurance premium (or payment in respect of it, if premiums are financed) or any of the Impositions must be paid to avoid delinquency, promptly after Beneficiary's request, Trustor agrees to deliver or cause to be delivered to Beneficiary a statement or statements showing the amount of the premium (or payment in respect of it, if premiums are financed) or Impositions required to be paid and the name and mailing address of the concern or authority to which it is payable and, at the same time, Trustor agrees to deposit or cause to be deposited with Beneficiary such amounts as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance obligations or Impositions. Beneficiary hereby agrees to apply such deposits in payment of such insurance obligations and Impositions prior to delinquency, but only if sufficient funds have been deposited with Beneficiary by Trustor for the payment of such amounts and Beneficiary has been timely furnished with the requisite statements of the amounts required to be paid and the names and addresses of the concerns or authorities to which such amounts are payable. Beneficiary shall in no way be obligated to pay any interest to Trustor on such deposits, and upon the occurrence of an Event of Default which is then continuing, Beneficiary is hereby irrevocably authorized to apply any and all amounts so deposited with Beneficiary against the amounts due under the Indebtedness (with such order of application to be at Beneficiary's discretion) without any further notice to or consent from Trustor or any other person or entity. Additionally, Trustor hereby irrevocably grants to Beneficiary a security interest and assigns to Beneficiary all such funds so deposited with Beneficiary as additional security for payment of the Indebtedness and all other amounts now or hereafter outstanding under any of the Loan Documents.

**ARTICLE 9**  
**GENERAL AND MISCELLANEOUS PROVISIONS**

**Section 9.1 INDEBTEDNESS MAY BE CHANGED WITHOUT AFFECTING THIS DEED OF TRUST.** Any of the Indebtedness may be extended, rearranged, renewed, increased or otherwise changed in any way, and any part of the security described in this Deed of Trust or any other security for any part of the Indebtedness may be waived or released without in anyway altering or diminishing the force, effect or lien of this Deed of Trust, and the lien, assignment and security interest granted by this Deed of Trust shall continue as a prior lien, assignment and security interest on all of the Property not expressly so released, until the final termination of this Deed of Trust.

**Section 9.2 SECURITY IS CUMULATIVE.** No other security now existing or hereafter taken to secure any part of the Indebtedness or the performance of any obligation or liability whatever shall in any manner affect or impair the security given by this Deed of Trust. All security for any part of the Indebtedness and the performance of any obligation or liability shall be taken, considered and held as cumulative.

**Section 9.3 USURY NOT INTENDED; SAVINGS PROVISIONS.** Notwithstanding any provision to the contrary contained in any Loan Document, it is expressly provided that in no case or event shall the aggregate of any amounts accrued or paid pursuant to this Deed of Trust which under applicable laws are or may be deemed to constitute interest ever exceed the maximum nonusurious interest rate permitted by applicable Texas or federal laws, whichever permit the higher rate. In this connection, Trustor and Beneficiary stipulate and agree that it is their common and overriding intent to contract in strict compliance with applicable usury laws. In furtherance thereof, none of the terms of this Deed of Trust shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. Trustor shall never be liable for interest in excess of the maximum rate permitted by applicable laws. If, for any reason whatever, such interest paid or received during the full term of the applicable indebtedness produces a rate which exceeds the maximum rate permitted by applicable laws, Beneficiary shall credit against the principal of such indebtedness (or, if such indebtedness shall have been paid in full, shall refund to the payor of such interest) such portion of said interest as shall be necessary to cause the interest paid to produce a rate equal to the maximum rate permitted by applicable laws. All sums paid or agreed to be paid to Beneficiary for the use, forbearance or detention of money shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the applicable indebtedness, so that the interest rate is uniform throughout the full term of such indebtedness. The provisions of this Section shall control all agreements, whether now or hereafter existing and whether written or oral, between Trustor and Beneficiary.

**Section 9.4 TRUSTOR WAIVES ALL POST-FORECLOSURE REDEMPTION RIGHTS.** Trustor will not at any time insist upon or plead or in any manner whatever claim, exercise or take the benefit or advantage of any stay or extension law now or at any time hereafter in force in any locality where the Property or any part thereof may or shall be situated before any sale or sales thereof to be made pursuant to any provision of this Deed of Trust, or to decree of any court of competent jurisdiction, nor after any such sale or sales made pursuant to any provision of this Deed of Trust, or to decree of any court of competent jurisdiction, nor after any such sale or sales will Trustor claim or exercise any right conferred by any law now or at any time hereafter in force to redeem the property so sold or any part of it, and Trustor hereby WAIVES all benefit and advantage of any such law or laws and WAIVES the appraisalment of the Property or any part of it and covenants that Trustor will not hinder, delay or impede the execution of any power in this Deed of Trust granted and delegated to the Trustee or Beneficiary, but that Trustor will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

**Section 9.5 SUBROGATION TO LIENS DISCHARGED.** Trustor hereby agrees that Beneficiary shall be subrogated to all rights, titles, interests, liens, benefits, remedies, equities, superior title and security interests (the "**Subrogated Liens**") owned, claimed or held as security for any indebtedness or other obligation (the "**Discharged Obligations**") directly or indirectly satisfied, discharged or paid with

money or other property advanced by Beneficiary. Irrespective of any formal or informal acknowledgment of partial or complete satisfaction or release of the Discharged Obligations, the Subrogated Liens shall be continued, renewed, extended, brought forward and rearranged as security for the Indebtedness in addition to and cumulative of the lien and security interest of this Deed of Trust. Foreclosure under this Deed of Trust shall constitute foreclosure of the Subrogated Liens.

**Section 9.6 CONSTRUCTION MORTGAGE.** If funds are to be advanced by Beneficiary against the Notes as construction progresses on the Real Property, then this is a construction mortgage, as such term is defined in the Texas Business and Commerce Code, and such funds are to be used to pay the costs of such construction.

**Section 9.7 DUE ON SALE.** Trustor agrees that if, without Beneficiary's and Lenders' prior written consent (except as otherwise expressly provided herein or in any of the other Loan Documents, including with respect to Permitted Encumbrances), (a) any part of or interest in the Property should be directly or indirectly transferred, conveyed or mortgaged, voluntarily or involuntarily, absolutely or as security, or (b) Trustor should transfer, convey or mortgage any part of the Property, Beneficiary shall have the right and option (except only in those circumstances, if any, where the exercise of such right is expressly prohibited by applicable law and such law also precludes Trustor from effectively waiving such prohibition), subject to any applicable terms of the Loan Agreement requiring Beneficiary to take any action at the request of Majority Lenders or receive the consent of Majority Lenders, to declare any or all of the Notes or the entire amount of the Indebtedness to be due and payable. Beneficiary shall have such right and option (subject to any applicable terms of the Loan Agreement requiring Beneficiary to take any action at the request of Majority Lenders or receive the consent of Majority Lenders) absolutely and irrespective of whether or not the transfer, conveyance or mortgage would or might (i) diminish the value of any security for the Indebtedness, (ii) increase the risk of default under this Deed of Trust, (iii) increase the likelihood of Beneficiary's having to resort to any security for the Indebtedness after default or (iv) add or remove the liability of any person or entity for payment of the Indebtedness or performance of any covenant or obligation under this Deed of Trust. To exercise such right and option, Beneficiary shall give written notice to Trustor and to the person or entity to whom such property was transferred, conveyed or mortgaged that the Notes or Indebtedness has been declared due and payable and that Beneficiary demands that its maker pay it. If Beneficiary's consent to a proposed transfer, conveyance or mortgaging is requested, Beneficiary shall have the right (in addition to its absolute right to refuse to consent to any such transaction), and subject to any applicable terms of the Loan Agreement requiring Beneficiary to take any action at the request of Majority Lenders or receive the consent of Majority Lenders, to condition its consent upon satisfaction of any one or more of the following requirements: (1) that the interest rate(s) on all or any part of the Indebtedness be increased to a rate which is then acceptable to Lenders; (2) that a reasonable transfer fee, in an amount determined by Beneficiary and Lenders, be paid; (3) that a principal amount deemed appropriate by Beneficiary and Lenders be paid against the Indebtedness to reduce to a level which is then acceptable to Beneficiary and Lenders the ratio that the outstanding balance of the Indebtedness bears to the value of the Property as determined by Beneficiary; (4) that Trustor and each proposed transferee execute an assumption agreement and such other instruments as Beneficiary or its counsel shall reasonably require and in form and substance satisfactory to Beneficiary and its counsel; (5) that the proposed transferee's creditworthiness and experience in owning and operating similar properties be demonstrable and proven to Beneficiary's and Lenders' reasonable satisfaction to be at least as good as Trustor's and Trustor's managers' at the time the Notes were first funded; (6) that the liability to Beneficiary and Lenders of Trustor and all makers and guarantors of all or any part of the Indebtedness will be confirmed by them in writing to be unaffected and unimpaired by such transfer, conveyance or mortgaging; and (7) that any existing or proposed junior Beneficiary expressly subordinate to all liens and security interests securing the Indebtedness as to both lien and payment right priority and consent to the proposed transaction in a writing addressed to Beneficiary. Notwithstanding the foregoing, the conditions in clauses (1) through (7) above shall not apply to (x) a conveyance of a portion of the Property due to condemnation by a governmental authority, (y) any easement or lease of residential units within the Property, or (z) any approval right of Agent or the Lenders in connection with any Permitted Transfer or Permitted Equity Change of Control Event under the Loan Agreement.

**Section 9.8 CONDEMNATION.** If before final termination of this Deed of Trust, all or a portion of the Property is taken for public or quasi-public purposes, either through eminent domain or condemnation proceedings, by voluntary conveyance under threat of condemnation with Beneficiary's express written consent and joinder or otherwise (collectively a "**Taking**"), Trustor hereby agrees that any and all sums of money awarded or allowed as damages, payments in lieu of condemnation awards or otherwise to or for the account of the owner of the Property or any portion of it on account of such taking shall be paid and delivered to Beneficiary, for the ratable benefit of Lenders, and they are hereby assigned to Beneficiary and shall be paid directly to Beneficiary. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Property and all judgments, decrees and awards for injury or damage to the Property shall be applied, first to reimburse Beneficiary or the Trustee for all costs and expenses, including reasonable attorneys' fees, reasonably incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be paid, at Trustor's option, either (i) to repair or restore the Property so affected by such condemnation, injury or damage in the same manner as provided in Section 4.1(h) above; provided, however, that if either (a) Beneficiary determines in its sole discretion that any such Taking would make it impossible or uneconomic to continue with the operation of the Property after such restoration or repair with the available condemnation proceeds and any other restoration funds deposited by Trustor with Beneficiary or (b) the loan-to-value ratio for the Loan (as defined in the Loan Agreement) after such repair and restoration shall be greater than sixty-five percent (65%), then, at the discretion of Beneficiary, all of said proceeds shall be applied to the payment of the Indebtedness in the order determined by Beneficiary in its sole discretion; or (ii) to the payment of the Indebtedness in the order determined by Beneficiary in its sole and absolute discretion. Trustor agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Beneficiary may reasonably request. Beneficiary is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Beneficiary shall not be, in any event or circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any such proceeds, judgments, decrees or awards.

**Section 9.9 APPRAISALS AND REPORTS TO BE PROVIDED.** At any time and from time to time, at Beneficiary's sole cost and expense prior to (a) the occurrence of an Event of Default which is then continuing or (b) when an appraisal of all or any portion of the Property is required by (i) applicable regulatory authorities or (ii) Beneficiary if Beneficiary determines in its sole discretion that the market value of real estate in the market in which the Property is located has deteriorated sufficiently for Beneficiary to require additional appraisals (but at Trustor's sole cost and expense after the occurrence of an Event of Default which is then continuing or, subject to the limitation set forth below, if an appraisal of all or any portion of the Property is then required by applicable regulatory authorities or by Beneficiary in the event of Beneficiary's determination of market deterioration as provided above), Beneficiary (by its officers, employees, directors or agents) may contract for the services of an appraiser approved by Beneficiary in its sole discretion to perform a written appraisal of the Property (or such parts of it as are designated in Beneficiary's request). Any such appraisal may be performed at any time or times upon reasonable notice to Trustor, as long as it does not unreasonably interfere with Trustor's use of the Property. Specifically, any appraiser is authorized to enter upon, and Trustor shall allow such appraiser access to, the Property at all reasonable times as may be reasonably necessary in the opinion of such appraiser to perform its professional services. Trustor will also furnish (or cause to be furnished to) such appraiser such historical and operational information regarding the Property as may be reasonably requested by such appraiser to facilitate preparation of an appraisal and will make available for meetings with such appraiser appropriate personnel having knowledge of such matters. Trustor will permit Beneficiary and its agents, independent contractors, representatives, employees and officers at all reasonable times and upon reasonable notice, to go upon, examine, inspect and remain on the Property for any lawful purpose and will furnish to Beneficiary on request all pertinent information in regard to the development, operation, use and status of the Property. Beneficiary may elect to deliver any such request orally, by facsimile, by mail or by hand delivery addressed to Trustor as provided in the Introduction to this Deed of Trust or by any other legally effective method, and it may be given at any time and from time to time before the complete and final release and discharge of this Deed of Trust. Any appraisal fee to be paid under this Section 9.9 by Trustor to Beneficiary after the occurrence of an Event of Default or as a result of regulatory requirements or Beneficiary's determination of market deterioration as provided above shall be a demand obligation owing by Trustor to Beneficiary and shall bear interest



from the date of expenditure at the Default Rate; provided, however, that in no event shall Trustor be required to reimburse Beneficiary for any appraisal fee resulting from an appraisal required by applicable regulatory authorities or by Beneficiary in the event of Beneficiary's determination of market deterioration as provided above more frequently than once during any consecutive twelve (12) month period unless a continuing Event of Default then exists.

**Section 9.10 NOTICES.** Except for notices where certified or registered mail notice is required by applicable law, any notice to Trustor required or permitted under this Deed of Trust shall be given in accordance with the notice provisions of the Loan Agreement.

**Section 9.11 BENEFICIARY AND TRUSTOR.** The terms "**Beneficiary**" and "**Secured Party**" as used in this Deed of Trust shall mean and include the entity appointed and serving as Agent under the Loan Agreement from time to time. The term "**Lenders**" as used in this Deed of Trust shall mean and include the holder or holders of the Indebtedness from time to time, and upon acquisition of the Indebtedness by any holder or holders other than the original Lenders as of the date of this Deed of Trust, effective as of the time of such acquisition, the term "Lenders" shall mean all of the then holders of the Indebtedness, to the exclusion of all prior holders not then retaining or reserving an interest in the Indebtedness from time to time, whether such holder acquires the Indebtedness through succession to or assignment from a prior Lender. The term "**Trustor**" and "**Debtor**" shall also include the heirs and legal representatives of each Trustor who is a natural person and the receivers, conservators, custodians and trustees of each Trustor. In general, Trustor may not assign or delegate any of its rights, interests or obligations under this Deed of Trust, the Notes or any Loan Document without Beneficiary's express prior written consent, and any attempted assignment or delegation without it shall be void or voidable at Beneficiary's election; provided, however, that Trustor may delegate its obligations under this Deed of Trust and any other Loan Documents regarding the management, maintenance and leasing of the Trust Property, as well as the construction of repairs to the Trust Property, to reputable agents or independent contractors without the prior written consent of Beneficiary except as otherwise required by the Loan Documents, but in any and all such events, Trustor shall remain fully obligated to Beneficiary in accordance with the provisions of this Deed of Trust and all other Loan Documents for the complete and full compliance with and performance of all such obligations.

**Section 9.12 ARTICLE, SECTION, PARAGRAPH AND EXHIBIT REFERENCES, NUMBERS AND HEADINGS.** References in this Deed of Trust to Articles, Sections, Paragraphs and Exhibits refer to Articles, Sections, Paragraphs and Exhibits in and to this Deed of Trust unless otherwise specified. The Article and Section numbers, Exhibit designations and headings used in this Deed of Trust are included for convenience of reference only and shall not be considered in interpreting, applying or enforcing this Deed of Trust.

**Section 9.13 EXHIBITS INCORPORATED.** All exhibits, annexes, appendices and schedules referred to any place in the text of this Deed of Trust are hereby incorporated into it at that place in the text, to the same effect as if set out there *verbatim*.

**Section 9.14 "INCLUDING" IS NOT LIMITING.** Wherever the term "including" or a similar term is used in this Deed of Trust, it shall be read as if it were written, "including by way of example only and without in any way limiting the generality of the clause or concept referred to."

**Section 9.15 GENDER.** The masculine and neuter pronouns used in this Deed of Trust each includes the masculine, feminine and neuter genders.

**Section 9.16 SEVERABILITY.** If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and this Deed of Trust shall be liberally construed so as to carry out the intent of the parties to it. Each waiver in this Deed of Trust is subject to the overriding and controlling rule that it shall be effective only if and to the extent that (a) it is not prohibited by applicable law and (b) applicable law neither provides for nor allows any material sanctions to be imposed against Beneficiary for having bargained for and obtained it.

**Section 9.17 ANY UNSECURED INDEBTEDNESS IS DEEMED PAID FIRST.** If any part of the Indebtedness cannot lawfully be secured by this Deed of Trust, or if the lien, assignments and security interest of this Deed of Trust cannot be lawfully enforced to pay any part of the Indebtedness, then and in either such event, at the option of Beneficiary, all payments on the Indebtedness shall be deemed to have been first applied against that part of the Indebtedness.

**Section 9.18 NOUN, PRONOUN AND VERB NUMBERS.** When this Deed of Trust is executed by more than one person, it shall be construed as though "Trustor" were written "Trustors" and as though the pronouns and verbs in their number were changed to correspond, and in such case, (a) each of Trustors shall be bound jointly and severally with one another to keep, observe and perform the covenants, agreements, obligations and liabilities imposed by this Deed of Trust upon the "Trustor", (b) a release of one or more persons, corporations or other legal entities comprising "Trustor" shall not in any way be deemed a release of any other person comprising "Trustor" and (c) a separate action hereunder may be brought and prosecuted against one or more of the persons, corporations or other legal entities comprising "Trustor" without limiting any liability of or impairing Beneficiary's right to proceed against any other person, corporation or other legal entity comprising "Trustor".

**Section 9.19 PAYMENTS RETURNED.** Trustor agrees that, if at any time all or any part of any payment previously applied by Beneficiary to the Indebtedness is or must be returned by Beneficiary, or recovered from Beneficiary, for any reason (including the order of any bankruptcy court), this Deed of Trust shall automatically be reinstated to the same effect as if the prior application had not been made, and, in addition, Trustor hereby agrees to indemnify Beneficiary against, and to save and hold Beneficiary harmless from any required return by Beneficiary, or recovery from Beneficiary, of any such payment because of its being deemed preferential under applicable bankruptcy, receivership or insolvency laws, or for any other reason.

**Section 9.20 AMENDMENTS IN WRITING.** This Deed of Trust shall not be changed orally but shall be changed only by agreement in writing signed by Trustor, Beneficiary and the applicable Lenders required by the terms of Section 12.10 of the Loan Agreement. Any waiver or consent with respect to this Deed of Trust shall be effective only in the specific instance and for the specific purpose for which given. No course of dealing between the parties, no usage of trade and no parole or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or provisions of this Deed of Trust.

**Section 9.21 GOVERNING LAW; VENUE. TRUSTOR AGREES THAT THIS DEED OF TRUST, ALL LOAN DOCUMENTS, AND ALL OTHER DOCUMENTS, INSTRUMENTS AND AGREEMENTS RELATED TO THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICTS OF LAW PROVISIONS. TRUSTOR IRREVOCABLY AND UNCONDITIONALLY (I) CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF TEXAS, AND ANY APPELLATE COURT THEREOF, (II) AGREES THAT ALL ACTIONS AND PROCEEDINGS BASED UPON, ARISING OUT OF, RELATING TO OR OTHERWISE CONCERNING THIS DEED OF TRUST, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT RELATED TO THIS DEED OF TRUST, INCLUDING ALL CLAIMS FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, SHALL SOLELY AND EXCLUSIVELY BE BROUGHT, HEARD, AND DETERMINED (LITIGATED) IN SUCH COURTS, (III) ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, THE SOLE AND EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, (IV) WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED UPON THE GROUNDS OF FORUM NON CONVENIENS, THAT IT MAY NOW OR HEREAFTER HAVE TO BRINGING OR MAINTAINING ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTION, AND (V) AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS DEED OF TRUST, SUCH OTHER LOAN DOCUMENT OR ANY SUCH OTHER DOCUMENT, INSTRUMENT OR AGREEMENT. NOTHING HEREIN SHALL LIMIT THE RIGHT OF BENEFICIARY TO BRING ANY ACTION OR PROCEEDING AGAINST TRUSTOR OR ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE ENFORCEMENT OF ANY LIENS OR SECURITY INTERESTS IN FAVOR OF BENEFICIARY ON ANY OF TRUSTOR'S PROPERTIES OR ASSETS.**

**NOTWITHSTANDING THE FOREGOING, THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIEN GRANTED BY THIS DEED OF TRUST SHALL BE GOVERNED BY THE LAWS OF THE STATE OF UTAH.**

**Section 9.22 STATUS OF THE PROPERTY.** Trustor acknowledges that the stated purpose for which this Deed of Trust is given is to finance, refinance or construct residential rental property. Accordingly, to permit Beneficiary to comply with Utah Code Ann. § 57-1-25 and other applicable law, Trustor agrees that promptly upon Beneficiary's request, 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 Ann. § 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.

**Section 9.23 ASSIGNMENT OF RENTS.** This Deed of Trust shall constitute an assignment of rents subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated, § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Deed of Trust and the provisions of the Utah Act, the provisions of the Utah Act shall control and Beneficiary shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

**Section 9.24 ENTIRE AGREEMENT.** This Deed of Trust, together with all of the other Loan Documents, embodies the entire agreement and understanding between Trustor, Beneficiary and Lenders with respect to its subject matter and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. Trustor acknowledges and agrees that there is no oral agreement between Trustor, Beneficiary and Lenders which has not been incorporated in this Deed of Trust.

***Signature Page Follows***

EXECUTED effective as of the Effective Date.

SLC CAMBER, LLC, a Delaware limited liability company

By: SLC Camber JV Holdings, LP, a Delaware limited partnership, its sole member

By: ERG SLC Camber Investors, Ltd., a Texas limited partnership, its general partner

By: EOP II SUB GP TWO, LLC, a Texas limited liability company, its general partner

By:

Name: David L. Roberts

Title: Chief Financial Officer

STATE OF TEXAS

§

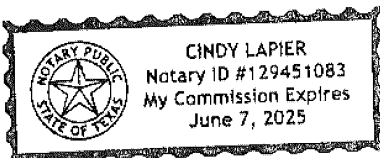
COUNTY OF TRAVIS

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This instrument was acknowledged before me on the 30 day of August, 2021, by David L. Roberts, the CFO of EOP II GP TWO, LLC, a Texas limited liability company, general partner of ERG SLC Camber Investors, Ltd., a Texas limited partnership, general partner to SLC Camber JV Holdings, LP, a Delaware limited partnership, sole member of SLC CAMBER, LLC, a Delaware limited liability company, for the purposes set forth herein on behalf of said limited liability company.

[Seal]



Cindy Lapiere  
Notary Public in and for the State of Texas

**ATTACH:**

Exhibit A - Description of the Real Property

Exhibit B - Permitted Encumbrances

Exhibit A

**DESCRIPTION OF THE REAL PROPERTY**

The Land is described as follows: Real property in the County of Salt Lake, State of UT, described as follows:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT-OF-WAY OF 300 NORTH STREET, SAID POINT BEING THE SOUTHEAST CORNER OF LOT 2, BLOCK 116, PLAT "A", SALT LAKE CITY SURVEY, SAID POINT ALSO BEING 233.37 FEET NORTH 89°59'54" WEST AND 65.63 FEET NORTH 00°00'06" EAST FROM THE STREET MONUMENT AT THE INTERSECTION OF 300 NORTH STREET AND 400 WEST STREET, AND RUNNING THENCE SOUTH 89°56'21" WEST 458.17 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY TO A POINT ON AN EASTERLY RAILROAD RIGHT-OF-WAY; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY THE FOLLOWING (5) FIVE COURSES: 1) NORTH 00°00'12" WEST 613.71 FEET; 2) SOUTH 89°59'48" EAST 11.63 FEET; 3) NORTH 00°00'12" EAST 20.00 FEET; 4) NORTH 89°59'48" WEST 11.63 FEET; 5) NORTH 00°00'12" WEST 26.65 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF 400 NORTH STREET; THENCE NORTH 89°55'34" EAST 169.54 FEET ALONG SAID SOUTHERLY RIGHT-OF-WAY; THENCE SOUTH 00°04'05" EAST 165.17 FEET; THENCE NORTH 89°56'29" EAST 5.34 FEET; THENCE SOUTH 08°25'25" EAST 40.43 FEET; THENCE NORTH 89°56'31" EAST 29.04 FEET; THENCE SOUTH 00°04'06" EAST 125.02 FEET; THENCE NORTH 89°55'58" EAST 247.51 FEET; THENCE SOUTH 00°05'16" EAST 330.23 FEET TO THE POINT OF BEGINNING.

Said property is also known by the street address of:  
430 West 300 North, Salt Lake City, UT 84103

Exhibit B

**PERMITTED ENCUMBRANCES**

8. Taxes for the year 2021 now a lien, not yet due. General property taxes for the year 2020 were paid in the amount of \$58,028.12. Tax Parcel No. 08-36-503-052-0000. (None now due or payable).  
(The following affects all of the Land)  
General property taxes for the year 2022 will be assessed under Tax Parcel No. 08-36-326-004-0000.  
(None now due or payable).
9. The land is included within the boundaries of Salt Lake City, Salt Lake City Metro Water District, Salt Lake City Mosquito Abatement District, Central Utah Water Conservancy District, North Temple Viaduct CDA, Salt Lake County Special Service District No. 1, Salt Lake City Utah Central Business Improvement District, and is subject to charges and assessments made thereby. (None now due or payable)
10. Reservations of all minerals and mineral rights as contained in that certain Special Warranty Deed recorded December 24, 1998 as Entry No. 7202238 in Book 8208 at Page 2578, subject to waiver of surface rights therein.
11. A Railroad Easement Deed and Agreement recorded December 24, 1998 as Entry No. 7202240 in Book 8208 at Page 2589 of Official Records.
12. Terms and Conditions of Abstract of Findings and Order recorded September 24, 1999 as Entry No. 7474403 in Book 8311 at Page 5337 of Official Records.
13. Ordinance No. 92 of 1999 Enacting the Capitol Hill Community Master Plan recorded November 29, 1999 as Entry No. 7522327 in Book 8326 at Page 75 of Official Records.
14. Ordinance No. 75 of 2009 Adopting the North Temple Viaduct Community Development Project Area Plan recorded December 23, 2009 as Entry No. 10864957 in Book 9791 at Page 186 of Official Records.
15. To the extent of the ingress and egress rights set forth on Page 5 (which is the 8th page of the recorded document) of the Easement Deed by Court Order in Settlement of Landowner Action as recorded October 29, 2013 as Entry No. 11750572 in Book 10188 at Page 6049, and on Page 5 of the Easement Deed by Court Order in Settlement of Landowner Action as recorded November 25, 2013 as Entry No. 11766167 in Book 10195 at Page 1502 of Official Records.
16. Partial Release and Quitclaim of Easement between Union Pacific Railroad Company, a Delaware corporation (Grantor) and SLC 300 North, LLC, a Texas limited liability company (Grantee), recorded February 26, 2020 as Entry No. 13202997 in Book 10901 at Page 6577.
17. Right of Way and Easement Agreement between SLC Icehouse Land JV, LP, a Texas limited partnership (Grantor) and Mcimetro Access Transmission Services Corp, a Delaware corporation (Grantee), recorded December 07, 2020 as Entry No. 13485421 in Book 11074 at Page 8197 of Official Records.
18. Notice of Subdivision Approval recorded February 19, 2021 as Entry No. 13572666 in Book 11121 at Page 7550 of Official Records.
19. Vehicular access is limited to openings permitted by the Utah State Department of Transportation in accordance with Section 41-6a-714, Utah Code Annotated, as amended 2005.

20. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.
21. The following matters disclosed by an ALTA/NSPS survey made by Shawn R. Vernon of Psomas on July 6, 2021, designated Job No. 8KJM010300:
- (a) Wall encroachment by up to 3.05 feet.
  - (b) Fiber optics line runs along the westerly property line.
  - (c) Fences not situated upon boundary lines.
  - (d) Building encroaches onto adjacent property by up to 1.0 feet.
  - (e) Utility poles located on property.
  - (f) Well located on the property.