

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Dentons US LLP
233 S. Wacker Drive, Suite 7800
Chicago, Illinois 60606
Attention: Steven R. Davidson, Esq.

Tax Parcel Nos. 15-01-108-034 and 15-01-178-002

145535-GTB

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10/14/2021 4:58:00 PM \$40.00
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RASHELLE HOBBS
Recorder, Salt Lake County, UT
INGEO SYSTEMS
BY: eCASH, DEPUTY - EF 34 P.

*THIS SPACE FOR RECORDER'S
USE ONLY*

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

**530 WEST LLC
AND**

**210 RIO LLC,
Individually and Collectively, as Borrower and Trustor**

to

COTTONWOOD TITLE INSURANCE COMPANY, INC.,

as initial Trustee for the benefit of

**JPMORGAN CHASE BANK, N.A.,
Administrative Agent**

Dated: As of October 14, 2021
Property Address: 530 and 550 West South and 210 South Rio Grande Street
Location: Salt Lake City, Utah

THIS INSTRUMENT IS A DEED OF TRUST WITHIN THE MEANING OF UTAH CODE ANN. § 57-1-19. THIS INSTRUMENT IS ALSO A FIXTURE FILING IN ACCORDANCE WITH SECTIONS 70A-9A-501(1)(A) AND 70A-9A-502(2) AND (3) OF THE UTAH UNIFORM COMMERCIAL CODE AND IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AS A “FIXTURE FILING,” AS DEFINED IN UTAH CODE ANN. § 70A-9A-102(40) AND COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES. THIS INSTRUMENT IS ALSO TO BE INDEXED AS A FINANCING STATEMENT UNDER THE NAMES OF TRUSTOR, AS “DEBTOR,” AND BENEFICIARY, AS “SECURED PARTY.”

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (this “Security Instrument”), is made this 14th day of October, 2021, among 530 West LLC, a Utah limited liability company, the address of which is c/o Hamilton Partners, 222 South Main Street, Suite 1760, Salt Lake City, Utah 84101 (“Cinq Borrower”); 210 Rio LLC, a Utah limited liability company, the address of which is c/o Hamilton Partners, 222 South Main Street, Suite 1760, Salt Lake City, Utah 84101 (“Rio Borrower”); together with Cinq Borrower, jointly and severally, individually and collectively, “Borrower” and “Trustor”), as trustor; Cottonwood Title Insurance Company, Inc., a Utah corporation, the address of which is 1996 East 6400 South, Suite 120, Salt Lake City, UT 84121, and its successors and assigns, as trustee (“Trustee”); for the benefit of JPMORGAN CHASE BANK, N.A., as beneficiary in its capacity as administrative agent (collectively with its successors or assigns including any successor administrative agent, “Administrative Agent”), for its benefit and for the benefit of the lenders from time to time party to the Loan Agreement (as defined below) (each, a “Lender,” and collectively, “Lenders”) at its offices at 10 South Dearborn, IL1-0958, Chicago, Illinois 60603.

1. **Granting Clause.** Borrower, in consideration of the acceptance by Trustee of the trust hereunder, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the obligations described in Section 3 below, irrevocably grants, warrants, transfers and conveys to Trustee and its successors and assigns, forever, in trust, with power of sale, all of Borrower’s estate, right, title, interest, claim and demand in and to the property in the County of Salt Lake, State of Utah, with a street address of 530 and 550 West South and 210 South Rio Grande Street (which address is provided for reference only and shall in no way limit the description of the real and personal property otherwise described in this Section 1), described as follows, whether now existing or hereafter acquired (all of the property described in all parts of this Section 1 and all additional property, if any, described in Section 2 is called the “Property”):

1.1 **Land and Appurtenances.** The land described on Exhibit A hereto (the “Land”), and all tenements, hereditaments, rights-of-way, easements, appendages and appurtenances thereto belonging or in any way appertaining, including, without limitation, any and all rights of a declarant under any covenant, condition, restriction, easement or other agreement, any and all of the right, title and interest of Borrower in and to any avenues, streets, ways, alleys, vaults, strips or gores of land adjoining that property, any and all rights to water, water stock, drains, drainage, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) (the “Water Rights”), water stock and development rights relating to that property, any and all rights to oil, gas, minerals, metals and other materials, and any and all claims or demands of Borrower either in law or in equity in possession or expectancy of, in and to that property; and

1.2 **Improvements and Fixtures.** All buildings, structures and other improvements now or hereafter erected on the property described in 1.1 above (the “Improvements”), and all facilities, fixtures, machinery, apparatus, installations, goods, equipment, inventory, furniture, building materials and supplies and other properties of whatsoever nature, now or hereafter located in and used or procured for use in connection with the operation of that property, or located in or upon the Land and Improvements or any part thereof, or to be

attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land and Improvements or elsewhere, it being the intention of the parties that all property of the character described above that is now owned or hereafter acquired by Borrower (and not owned by a tenant of Borrower) and that is affixed to, attached to and used in connection with the operation of the property described in 1.1 above shall be, remain or become a portion of that property and shall be covered by and subject to the lien of this Security Instrument, together with, to the extent assignable, all contracts, agreements, warranties, guaranties, permits, licenses, certificates, approvals, plans, specifications, drawings, surveys, engineering reports and other work products relating to the construction, development or operation of the Land and the existing and future Improvements, any and all rights of Borrower in, to or under any architect's contracts, engineer's contracts or construction contracts relating to the construction of the existing or any future Improvements, and any performance and/or payment bonds issued in connection therewith, together with all trademarks, trade names, copyrights, computer software and other intellectual property used by Borrower in connection with the Property; and

1.3 **Enforcement and Collection.** Any and all rights of Borrower without limitation to make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, earnest money, deposits, refunds (including but not limited to refunds from taxing authorities, utilities and insurers), royalties, and profits, including mineral, oil and gas rights and profits, insurance proceeds of any kind (whether or not Administrative Agent requires such insurance and whether or not Administrative Agent is named as an additional insured or loss payee of such insurance), condemnation awards and other moneys, payable or receivable from or on account of any of the Property, including interest thereon, or to enforce all other provisions of any other agreement (including those described in Section 1.2 above) affecting or relating to any of the Property, to bring any suit in equity, action at law or other proceeding for the collection of such moneys or for the specific or other enforcement of any such agreement, award or judgment, in the name of Borrower or otherwise, and to do any and all things that Borrower is or may be or become entitled to do with respect thereto, provided, however, that no obligation of Borrower under the provisions of any such agreements, awards or judgments shall be impaired or diminished by virtue hereof, nor shall any such obligation be imposed upon Trustee, Administrative Agent or any Lender; and

1.4 **Accounts and Income.** Any and all rights of Borrower in any and all accounts, rights to payment, contract rights, chattel paper, documents, instruments, licenses, contracts, agreements, Impounds (as defined below) and general intangibles relating to any of the Property, including, without limitation, income, issues, profits, royalties and proceeds from the Property; and

1.5 **Leases.** All of Borrower's rights as landlord in and to all existing and future leases, subleases and tenancies, whether written or oral and whether for a definite term or month to month or otherwise, now or hereafter demising all or any portion of the property described in 1.1 and 1.2 above, including all renewals and extensions thereof and all rents, deposits and other amounts received or receivable thereunder, and including all guaranties, supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any such lease, sublease or tenancy or otherwise growing out of any occupancy or use of any of the Property; and

1.6 **Insurance Policies; Condemnation Awards.** All rights in and to all pertinent present and future fire, hazard, earthquake or other insurance policies covering any of the Property (whether or not Administrative Agent requires such insurance and whether or not Administrative Agent is named as an additional insured or loss payee of such insurance); and all Awards (defined below); and all proceeds or sums payable in lieu of or as compensation for the loss of or damage to any of the Property; and

1.7 **Swap Agreements.** Any and all Swap Agreements of Borrower and any and all rights that Borrower may now or hereafter have to any and all payments, disbursements, distributions or proceeds owing, payable or required to be delivered to Borrower on account of any and all Swap Agreements; and

1.8 **Books and Records.** All books and records of Borrower relating to the foregoing in any form; and

1.9 **Proceeds.** All replacements, products and proceeds of, and additions and accessions to, any of the foregoing. In accepting this Security Instrument, none of Administrative Agent, any Lender nor Trustee assumes any liability in connection with any of the Property, including any obligation under any lease or agreement.

2. **Security Agreement, Fixture Filing and Assignment of Leases and Rents.**

2.1 **Security Agreement.** To the extent any of the property described in Section 1 is personal property, Borrower, as debtor, grants to Administrative Agent, for the ratable benefit of the Lenders, as secured party, a security interest therein and in all products and proceeds of any thereof, pursuant to the Uniform Commercial Code of the State of Utah and any other applicable Uniform Commercial Code (collectively, the "UCC"), on the terms and conditions contained herein, to secure the obligations described in Section 3 below. Borrower hereby authorizes Administrative Agent to file any financing statement, fixture filing or similar filing to perfect the security interests granted in this Security Instrument without Borrower's signature.

2.2 **Fixture Filing.** This Security Instrument constitutes a fixture filing by Administrative Agent, as secured party, and Borrower, as debtor, under the UCC. This Security Instrument as a fixture filing covers any and all fixtures included within the list of property described in Section 1 of this Security Instrument and any goods and other personal property that are now or hereafter will become a part of the Property as fixtures. For the purposes of this fixture filing, the respective addresses of Administrative Agent and Borrower are set forth in the first paragraph of this Security Instrument, such fixtures are affixed or to be affixed to the Land and Improvements described in Section 1 of this Security Instrument, and this Security Instrument, including this fixture filing, is recorded or to be recorded in the real estate records of the County in which the Land is located.

2.3 **Assignment of Leases and Rents.**

2.3.1 **Absolute Assignment.** Borrower hereby absolutely and unconditionally grants, transfers, conveys, sells, sets over and assigns to Administrative Agent, for the ratable benefit of the Lenders, all of Borrower's right, title and interest now existing and hereafter arising in and to the leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, either oral or written, now existing and

hereafter arising which affect the Property, Borrower's interest therein or any improvements located thereon, together with any and all security deposits, guaranties of the lessees' or tenants' obligations (including any and all security therefor), and other security under any such leases, subleases, concessions, licenses, franchises, occupancy agreements, tenancies, subtenancies and other agreements, and all supporting obligations, letters of credit (whether tangible or electronic) and letter of credit rights guaranteeing or supporting any of the foregoing (all of the foregoing, and any and all extensions, modifications and renewals thereof, shall be referred to, collectively, as the "Leases"), and hereby gives to and confers upon Administrative Agent the right to collect all the income, rents, issues, profits, royalties and proceeds from the Leases and any and all prepaid rent and security deposits thereunder (collectively, the "Rents"). The term "Rents" includes, but is not limited to, all minimum rents, additional rents, percentage rents, deficiency rents, common area maintenance charges, lease termination payments, purchase option payments, refunds of any type, prepayment of rents, settlements of litigation, settlements of past due rents, and liquidated damages following default, and all proceeds payable under any policy of insurance covering loss of rents, together with any and all rights and claims of any kind that Borrower may have against any tenant under the Leases or any other occupant of the Property. This Security Instrument is intended by Administrative Agent, the Lenders and Borrower to create and shall be construed to create an absolute assignment to Administrative Agent, for the ratable benefit of the Lenders, of all of Borrower's right, title and interest in and to the Leases and the Rents and shall not be deemed merely to create a security interest therein for the payment of any indebtedness or the performance of any obligations under the Loan Documents (as defined below). Borrower irrevocably appoints Administrative Agent its true and lawful attorney at the option of Administrative Agent at any time a Default (as defined below) exists and remains uncured to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, either in the name of Borrower or in the name of Administrative Agent, for all such Rents and apply the same to the obligations secured by this Security Instrument.

2.3.2 Revocable License to Collect. Notwithstanding the foregoing assignment of Rents, so long as no Default remains uncured, Borrower shall have a revocable license, to collect all Rents, and to retain the same. Upon the occurrence and during the continuation of any Default, Borrower's license to collect and retain Rents shall terminate automatically and without the necessity for any notice.

2.3.3 Collection and Application of Rents by Administrative Agent. While any Default remains uncured: (i) Administrative Agent and/or any Lender may at any time, without notice, in person, by agent or by court-appointed receiver, and without regard to the adequacy of any security for the obligations secured by this Security Instrument, enter upon any portion of the Property and/or, with or without taking possession thereof, in its own name sue for or otherwise collect Rents (including past due amounts); and (ii) upon written demand by Administrative Agent therefor, Borrower shall promptly deliver to Administrative Agent all prepaid rents, deposits relating to Leases or Rents, and all other Rents then held by or thereafter collected by Borrower, whether prior to or during the continuance of any Default. Any Rents collected by or delivered to Administrative Agent may be applied by Administrative Agent against the obligations secured by this Security Instrument, and all expenses, including attorneys' fees and disbursements, in such order as Administrative Agent shall determine in its sole and absolute discretion. No application of Rents against any obligation secured by this Security Instrument or other action taken by Administrative Agent and/or any Lender under this Section 2.3 shall be

deemed or construed to cure or waive any Default, or to invalidate any other action taken in response to such Default, or to make Administrative Agent or any Lender a mortgagee-in-possession of the Property.

2.3.4 Direction to Tenants. Borrower hereby irrevocably authorizes and directs the tenants under all Leases to pay all amounts owing to Borrower thereunder to Administrative Agent following receipt of any written notice from Administrative Agent that states that a Default remains uncured and that all such amounts are to be paid to Administrative Agent. Borrower further authorizes and directs all such tenants to pay all such amounts to Administrative Agent without any right or obligation to inquire as to the validity of Administrative Agent's notice and regardless of the fact that Borrower has notified any such tenants that Administrative Agent's notice is invalid or has directed any such tenants not to pay such amounts to Administrative Agent.

2.3.5 No Obligation to Perform. None of Administrative Agent, any Lender nor Trustee shall have any obligation to exercise any right given to either of them under this Security Instrument. Nothing contained herein shall operate or be construed to obligate Administrative Agent, any Lender or Trustee to perform any obligations of Borrower under any agreement or lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Administrative Agent and/or any Lender, this assignment shall not operate to place upon Administrative Agent and/or any Lender any responsibility for the operation, control, care, management or repair of the Property or any portion thereof, and the execution of this assignment by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

2.3.6 Utah Uniform Assignment of Rents Act. The rights, remedies and obligations of Borrower and Administrative Agent under this Security Instrument are subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated*, Section 57-26-101 et. seq. (the "Act"), and in the event of any conflict or inconsistency between the provisions of this Article 2 and the provisions of the Act, the provisions of the Act shall control.

3. Obligations Secured. This Security Instrument is given for the purpose of securing (the following collectively, the "Secured Obligations"):

3.1 Performance and Payment.

3.1.1 The payment and performance of all indebtedness and other obligations and amounts owing by Borrower to Administrative Agent and the Lenders under that certain Construction Loan Agreement dated as of the date hereof between Borrower, as borrower, Administrative Agent and the Lenders, and any and all extensions, renewals, modifications and replacements thereof (the "Loan Agreement"), and one or more promissory notes dated as of the date hereof made by Borrower, payable to a Lender or order, in the aggregate stated principal amount of \$78,240,000.00, and any and all substitutions, extensions, renewals, restatements, modifications and replacements thereof, whether the same be in greater or lesser amounts (collectively, the "Note"), including, but not limited to, all principal and interest owing thereunder,

which Loan Agreement and Note may provide for one or more of the following: (a) a variable rate of interest; (b) a balloon payment at maturity; (c) deferral of a portion of accrued interest under certain circumstances with interest so deferred added to the unpaid principal balance secured hereby; or (d) advances of principal after the date hereof. Capitalized terms used and not defined in this Security Instrument shall have the respective meanings given to them in the Loan Agreement.

3.1.2 The payment and performance of all indebtedness and other obligations and amounts owing by Borrower under this Security Instrument and the other Loan Documents (other than the Environmental Indemnity Agreement which shall not be secured by this Security Instrument).

3.1.3 The payment and performance of any and all Swap Obligations owing by Borrower under any Swap Agreement with Administrative Agent, a Lender or an Affiliate of Administrative Agent or a Lender that states that it is secured by this Security Instrument.

3.1.4 The payment and performance of all indebtedness and other obligations and amounts owing by Borrower contained in any extensions, renewals, modifications and replacements of any of the foregoing.

3.2 **Future Advances.** The repayment of any and all sums advanced or expenditures made by Administrative Agent and the Lenders subsequent to the execution of this Security Instrument for the maintenance or preservation of the Property or advanced or expended by Administrative Agent and the Lenders pursuant to any provision of the Loan Agreement, this Security Instrument or any other Loan Document subsequent to its execution, together with interest thereon at the Default Rate set forth in the Loan Agreement.

3.3 **Interest.** All of the obligations secured by this Security Instrument shall bear interest at the rate of interest applicable under the Loan Agreement (including the Default Rate as applicable), which interest shall also be secured by this Security Instrument.

3.4 **Other Amounts.** All other obligations and amounts now or hereafter owing by Borrower to Administrative Agent and the Lenders under this Security Instrument, the Note or any other document, instrument or agreement evidencing, securing or otherwise relating to the loan evidenced by the Loan Agreement and the Note (the “Loan”) and any and all extensions, renewals, modifications or replacements of any thereof (collectively, the “Loan Documents”); provided, however, that this Security Instrument does not and shall not in any event be deemed to, secure the obligations owing to Administrative Agent and the Lenders under: (a) the Environmental Indemnity Agreement (or any obligations that are the substantial equivalent thereof); or (b) any guaranty of the Loan executed by a Person other than Borrower.

4. **Warranties and Covenants of Borrower.** Borrower represents and warrants to, and covenants and agrees with, Administrative Agent and the Lenders as provided herein. All representations and warranties contained in this Security Instrument are true and correct in all material respects as of the date of this Security Instrument and shall remain true and correct in all material respects as of each date thereafter while this Security Instrument remains of record or any portion of the obligations secured hereby remains unpaid.

4.1 **Warranties.**

4.1.1 To Borrower's knowledge after reasonable inquiry and except as otherwise disclosed to Administrative Agent in writing, the Property is free from damage (including, but not limited to, any construction defects or nonconforming work) that would materially impair the value of the Property as security.

4.1.2 The Loan which is secured by this Security Instrument is solely for business or commercial purposes, and is not for personal, family, household or agricultural purposes.

4.2 **Preservation of Lien.** Borrower will preserve and protect the validity and priority of this Security Instrument as a valid first lien on the Property. If Borrower fails to do so, Administrative Agent may take any and all actions necessary or appropriate to do so and all sums expended by Administrative Agent in so doing shall be treated as part of the obligations secured by this Security Instrument, shall be paid by Borrower upon demand by Administrative Agent and shall bear interest at the Default Rate.

4.3 **Repair and Maintenance of Property.** Borrower will keep the Property in good condition and repair, which duty shall include but is not limited to cleaning, painting, landscaping, repairing, and refurbishing of the Property; will complete and not remove or demolish, alter, or make additions to any building or other improvement that is part of the Property, or construct any new structure on the Property, without the express written consent of Administrative Agent, which consent shall not be unreasonably withheld or delayed; will underpin and support when necessary any such building or other improvement and protect and preserve the same; will complete or restore promptly and in good and workmanlike manner any such building or other improvement that may be damaged or destroyed and pay when due all claims for labor performed and materials furnished therefor; will not commit, suffer, or permit any act upon the Property in violation of law; and will do all other acts that from the character or use of the Property may be reasonably necessary for the continued operation of the Property in a safe and legal manner, the specific enumerations herein not excluding the general. Notwithstanding anything in this Security Instrument to the contrary, Borrower may make commercially reasonable minor alterations, improvements and replacements to the Property in a manner customary for similar properties and Borrower or its tenants may construct tenant improvements provided for under *bona fide* Leases of commercial space in the Property that have been entered into in compliance with the requirements of this Security Instrument and the other Loan Documents and may perform necessary demolition and alterations in connection with such tenant improvements.

4.4 **Insurance.** Borrower will provide and maintain such property, liability, rental income interruption, flood and other insurance coverage required under, and perform all of Borrower's other obligations under, Article V of the Loan Agreement. Administrative Agent shall have the right to control or direct the proceeds of all policies of insurance on the Property, whether or not required by the terms of this Security Instrument or the Loan Agreement, as provided in this Section 4.4, and all proceeds of all such policies are hereby assigned to Administrative Agent, for the ratable benefit of the Lenders, as security for the obligations secured by this Security Instrument. Borrower shall be responsible for all uninsured losses and deductibles.

4.4.1 Borrower's Obligations. In the event of any damage to or loss or destruction of the Property (a "Casualty"):

- (i) if it could reasonably be expected to cost more than the Casualty Threshold Amount (as defined below) to repair the Casualty, Borrower shall give prompt written notice of the Casualty to Administrative Agent and to Borrower's insurer, and shall make a claim under each insurance policy providing coverage therefor and shall promptly furnish Administrative Agent with a copy of such claim, together with proof of loss and related documentation;
- (ii) Borrower shall take such actions as are necessary or appropriate to preserve and protect the Property;
- (iii) if the aggregate proceeds of any and all insurance policies insuring the Property, whether or not required by this Security Instrument, that are payable as a result of the Casualty (collectively, the "Insurance Proceeds") could reasonably be expected to exceed the Casualty Threshold Amount, or if a Default or an event which, with notice or lapse of time or both, constitutes a Default (an "Unmatured Default") exists, Borrower shall take such actions as are necessary or appropriate to ensure that all Insurance Proceeds are paid to Administrative Agent forthwith to be held by Administrative Agent until applied to the obligations secured hereby or disbursed in accordance with this Section 4.4; and
- (iv) unless otherwise instructed by Administrative Agent, regardless of whether the Insurance Proceeds, if any, are sufficient for the purpose, Borrower shall promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value, condition and character immediately prior to the Casualty (collectively, the "Restoration"). If the Restoration will cost more than the Casualty Threshold Amount to repair, Borrower shall submit the proposed plans and specifications for the Restoration, and all construction contracts, architect's contracts, other contracts in connection with the Restoration, and such other documents as Administrative Agent may reasonably request to Administrative Agent for its review and approval, which approval shall not be unreasonably withheld or delayed. Borrower shall not begin the Restoration unless and until Administrative Agent gives its written approval of such plans, specifications, contracts and other documents, with such revisions as Administrative Agent may reasonably require. Notwithstanding the foregoing, Administrative Agent nor any Lender shall not be responsible for the sufficiency, completeness, quality or legality of any such plans, specifications, contracts or other documents. Borrower shall pay, within ten (10) days after demand by Administrative Agent, all costs reasonably incurred by Administrative Agent and Lenders in connection with the adjustment, collection and disbursement of Insurance Proceeds pursuant to this Security Instrument or otherwise in connection with the Casualty or the Restoration.

4.4.2 Casualty Threshold Amount. As used in this Security Instrument, the term "Casualty Threshold Amount" means \$2,000,000.

4.4.3 Administrative Agent's and Lenders' Rights. Subject to Borrower's right to control and administer Insurance Proceeds where the loss is expected to be equal to or less than the Casualty Threshold Amount, Administrative Agent shall have the right and power to receive and control all Insurance Proceeds required to be paid to it pursuant to clause (iii) of subsection 4.4.1 above. Borrower hereby authorizes and empowers Administrative Agent, in its own name or as attorney-in-fact for Borrower (which power is coupled with an interest and is irrevocable so long as this Security Instrument remains of record) at any time a Default exists, to make proof of loss, to settle, adjust and compromise any claim under insurance policies on the Property, to appear in and prosecute any action arising from such insurance policies, to collect and receive Insurance Proceeds, and to deduct therefrom Administrative Agent's and Lenders'

expenses incurred in the adjustment, collection and disbursement of such Insurance Proceeds or otherwise in connection with the Casualty or the Restoration. Each insurance company concerned is hereby irrevocably authorized and directed to make payment of all Insurance Proceeds directly to Administrative Agent. Notwithstanding anything to the contrary, none of Administrative Agent, Trustee nor any Lender shall be responsible for or incur any liability for any such insurance or for the form or legal sufficiency of insurance contracts, solvency of insurers or payment of losses, and Borrower hereby expressly assumes full responsibility therefor, and all liability, if any thereunder.

4.4.4 Application of Proceeds. Subject to applicable law, if, at any time while Administrative Agent holds any Insurance Proceeds, Administrative Agent shall have the option, in its sole discretion, to apply the Insurance Proceeds to the obligations secured hereby in such order as Administrative Agent may determine (or to hold such proceeds for future application to those obligations). Administrative Agent may apply the Insurance Proceeds to the obligations secured hereby, if: (i) a Default exists; (ii) Borrower fails to satisfy any condition precedent to disbursement of Insurance Proceeds to pay the cost of the Restoration within a reasonable time; or (iii) Administrative Agent determines in its reasonable discretion that (A) with respect to any Casualty occurring prior to Substantial Completion (as defined in the Loan Agreement), (1) Borrower will not have sufficient funds to complete the Restoration and timely pay all expenses of the Property and all payments due under the Loan Agreement and the other Loan Documents through the completion of the Restoration and any leaseup period thereafter, the Restoration cannot be completed prior to the date that is sixty days after the Expected Completion Date, or (B) with respect to any Casualty occurring after Substantial Completion, (1) Borrower will not have sufficient funds to complete the Restoration and timely pay all expenses of the Property and all payments due under the Loan Agreement and the other Loan Documents through the completion of the Restoration and any leaseup period thereafter, (2) the rental income from the Property will be insufficient to timely pay all expenses of the Property and payments due under the Loan Agreement and the other Loan Documents on an ongoing basis after completion of the Restoration or will be insufficient to provide a Debt Service Coverage Ratio at least equal to that existing immediately prior to the Casualty (as determined by Administrative Agent), or (3) the Restoration cannot be completed at least (y) six months prior to the Maturity Date or (z) within twelve months after the date of the Casualty. Nothing provided herein shall extend the maturity date of the Note.

4.4.5 Disbursement of Proceeds. If Administrative Agent is not entitled to apply the Insurance Proceeds to the obligations secured hereby, Administrative Agent (or at Administrative Agent's election, a disbursing or escrow agent selected by Administrative Agent and whose fees shall be paid by Borrower) shall disburse the Insurance Proceeds for the Restoration from time to time as the Restoration progresses, but only after satisfaction, at Borrower's expense, of such conditions precedent to such disbursements as Administrative Agent may reasonably require including but not limited to the following: (i) Borrower shall have delivered to Administrative Agent evidence reasonably satisfactory to Administrative Agent of the estimated cost of the Restoration and of the schedule and estimated completion date of the Restoration (and such completion date must not be later than the Maturity Date); (ii) Administrative Agent shall have approved the plans, specifications and contracts for the Restoration; (iii) if applicable, Borrower shall have delivered to Administrative Agent funds in addition to the Insurance Proceeds in an amount sufficient in Administrative Agent's reasonable judgment to complete and fully pay for the Restoration; (iv) Borrower shall have delivered to Administrative Agent such building permits, other permits, architect's certificates, waivers of lien,

contractor's sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance as Administrative Agent may reasonably require and approve; and (v) if required by Administrative Agent, Borrower shall have entered into an agreement providing in greater detail for the Restoration and the disbursement of Insurance Proceeds. No payment made prior to the final completion of the Restoration shall exceed ninety percent (90%) of the value of the work performed and materials incorporated into the Property from time to time, as such value is determined by Administrative Agent in its reasonable judgment. Disbursements may, at Administrative Agent's election, be made on a percentage of completion basis or on such other basis as is reasonably acceptable to Administrative Agent. Disbursements shall be subject to Borrower's delivery of such lien waivers as Administrative Agent may require, and otherwise on terms and subject to conditions acceptable to Administrative Agent. From time to time after commencement of the Restoration, if so requested by Administrative Agent, Borrower shall deposit with Administrative Agent funds in excess of the Insurance Proceeds which, together with the Insurance Proceeds and all funds previously deposited with Administrative Agent in connection with the Restoration, must at all times be at least sufficient in the reasonable judgment of Administrative Agent to pay the entire unpaid cost of the Restoration. Funds so deposited by Borrower may at Administrative Agent's option be disbursed prior to the disbursement of Insurance Proceeds. Administrative Agent may retain a construction consultant to inspect the Restoration and related matters on Administrative Agent's and Lenders' behalf and to advise Administrative Agent with respect thereto and Borrower shall pay the cost thereof; provided that neither Borrower nor any other person or entity other than Administrative Agent shall have any right to rely on any inspection or advice of such consultant. Such consultant shall not be the agent of Administrative Agent nor any Lender and shall not have the power to bind Administrative Agent nor any Lender in any way. Any surplus Insurance Proceeds or other funds held by Administrative Agent pursuant to this Section 4.4 that may remain after payment of all costs of the Restoration shall be paid to Borrower (or to such other person or entity as Administrative Agent reasonably determines is entitled thereto) so long as no Default or Unmatured Default then exists. Unless required under applicable law, no interest shall be payable to Borrower on account of any Insurance Proceeds or other funds held by Administrative Agent pursuant to this Section 4.4, but at Borrower's request, Administrative Agent will deposit such amounts into a blocked interest-bearing account with Administrative Agent over which Administrative Agent has sole possession, authority and control, in which Administrative Agent, for the ratable benefit of the Lenders, has a perfected first-priority security interest to secure the obligations secured by this Security Instrument, and otherwise on terms and conditions satisfactory to Administrative Agent in its sole discretion. Notwithstanding the above, if a Default exists prior to full disbursement of the Insurance Proceeds and any other funds held by Administrative Agent pursuant to this Section 4.4, any undisbursed portion thereof may, at Administrative Agent's option, be applied against the obligations secured by this Security Instrument, whether or not then due, in such order and manner as Administrative Agent shall select.

4.4.6 Effect on the Indebtedness. Any reduction in the obligations secured hereby resulting from the application of Insurance Proceeds or other funds pursuant to this Section 4.4 shall be deemed to take effect only on the date of such application; provided that, if any Insurance Proceeds are received after the Property is sold in connection with a judicial or nonjudicial foreclosure of this Security Instrument, or is transferred by deed in lieu of such foreclosure, notwithstanding any limitation on Borrower's liability contained herein or in any other Loan Document, the purchaser at such sale (or Administrative Agent, any Lender or other grantee

under such deed) shall have the right to receive and retain all such Insurance Proceeds and all unearned premiums for all insurance on the Property. No application of Insurance Proceeds or other funds to the obligations secured hereby shall result in any adjustment in the amount or due dates of installments due under the Loan Agreement. No application of Insurance Proceeds to the obligations secured hereby shall, by itself, cure or waive any Default or Unmatured Default or any notice of default under this Security Instrument or any other Loan Document or invalidate any act done pursuant to such notice or result in the waiver of any collateral securing the Loan Agreement or the Note.

4.5 Right of Inspection. Subject to the rights of tenants, Borrower shall permit Administrative Agent, any Lender, or its agents or independent contractors (including, but not limited to, appraisers, environmental consultants and construction consultants), at all reasonable times, and upon reasonable advance notice (except in the event of an emergency, in which case no advance notice is required) to enter upon and inspect the Property, without materially and adversely interfering with the use and enjoyment of the Property by Borrower or any tenants of Borrower at the Property.

4.6 Compliance with Laws; Preservation of Licenses. Borrower shall comply in all material respects with all easements, licenses and agreements relating to the Property or Borrower's use thereof. Borrower shall observe and comply in all material respects with all requirements necessary to the continued existence and validity of all rights, licenses, permits, privileges, franchises and concessions relating to any existing or presently contemplated use of the Property, including but not limited to any zoning variances, special exceptions and nonconforming use permits.

4.7 Further Assurances. Borrower will, at its expense, from time to time execute and deliver any and all such instruments of further assurance and other instruments and do any and all such acts, or cause the same to be done, as Trustee or Administrative Agent deems necessary to grant the Property to Trustee or to carry out the purposes of this Security Instrument.

4.8 Expenses. Borrower will pay all costs, fees and expenses reasonably incurred by Administrative Agent, Lenders and Trustee in connection with this Security Instrument.

4.9 Repayment of Expenditures. Borrower will pay within five (5) days after written demand all amounts secured by this Security Instrument, other than principal owing under the Note and Loan Agreement and interest accrued thereon, with interest from date of expenditure at the Default Rate and the repayment thereof shall be secured by this Security Instrument.

4.10 Sale, Transfer, or Encumbrance of Property. Borrower shall not cause, permit or suffer the occurrence of any "Default" under Section 6.01(f) (Transfer or Encumbrance of Interest in Property) or Section 6.01(g) (Transfer or Encumbrance of Interest in Borrower) of the Loan Agreement.

4.11 Tax and Insurance Impounds.

4.11.1 Impounds. In addition to the payments required by the Note and the Loan Agreement, if required by Administrative Agent after the occurrence and during the continuance of a Default, Borrower shall pay Administrative Agent such sums as Administrative

Agent may from time to time estimate will be required (a) to pay, at least one (1) month before delinquency, the next-due taxes, assessments, insurance premiums and similar charges affecting the Property (collectively, the "Impositions"), divided by the number of months to elapse before one (1) month prior to the date when the applicable Impositions will become delinquent; and (b) at the option of Administrative Agent and to the extent permitted under applicable law, to maintain a reserve equal to one-sixth (1/6th) of the total annual amount of the Impositions. Administrative Agent shall hold such amounts without interest or other income to Borrower (unless required under applicable law) to pay the Impositions. If this estimate of the Impositions proves insufficient, Borrower, upon demand by Administrative Agent, shall pay Administrative Agent such additional sums as may be required to pay the Impositions at least one month before delinquency.

4.11.2 Application. If the total of the payments to Administrative Agent under subsection 4.11.1 (collectively, the "Impounds") in any one year exceeds the amounts actually paid by Administrative Agent and/or Lenders for Impositions, all or any portion of such excess may be paid to Borrower or credited by Administrative Agent on subsequent payments under this Section. At any time after the occurrence and during the continuance of a Default and at or prior to the foreclosure sale, Administrative Agent may apply any balance of Impounds it holds to any of the Secured Obligations and in such order as Administrative Agent may elect. If Administrative Agent does not so apply such Impounds at or prior to the foreclosure sale, the purchaser at such sale shall be entitled to all such Impounds. If Borrower gives a deed in lieu of foreclosure of this Security Instrument, the balance of Impounds held by Administrative Agent shall become the property of Administrative Agent, for the ratable benefit of the Lenders. Any transfer in fee of all or a part of the Property shall automatically transfer to the grantee all or a proportionate part of Borrower's rights and interest in the Impounds. Borrower hereby grants to Administrative Agent, for the ratable benefit of the Lenders, a lien on and security interest in the Impounds as security for the obligations secured by this Security Instrument.

4.11.3 Tax Reporting Service. Administrative Agent may, but need not, contract with a tax reporting service covering the Property. Borrower agrees that Administrative Agent and Lenders may rely on the information furnished by such tax service and agrees to pay the cost of that service within thirty (30) days after receipt of a billing for it.

4.12 Leasing Matters. Borrower shall perform its obligations under Section 3.02 (Leases) of the Loan Agreement.

4.12.1 Representations and Warranties. Except as otherwise noted in an estoppel certificate and/or rent roll from Borrower delivered to and approved by Administrative Agent in connection with the Loan: (a) Borrower has good and marketable title to the Leases and Rents free and clear of all claims and Liens; (b) the Leases are valid, binding and enforceable and unmodified, and Borrower is not in default of any of the material terms and provisions of the Leases; (c) none of the Leases or the Rents has been assigned or otherwise pledged or hypothecated except to Administrative Agent, for the ratable benefit of the Lenders; (d) the Rents now due or to become due for any period subsequent to the date hereof have not been collected and payment thereof has not been made for a period of more than one (1) month in advance, waived or released, discounted, set off or otherwise discharged or compromised; (e) Borrower has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents other than security deposits required by the Leases; (f) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have

taken possession of the same on a rent-paying basis; (g) there exists no offset or defense to the payment of any portion of the Rents; (h) no Lease contains an option to purchase, right of first refusal to purchase, expansion right, or any other similar provision; and (i) no Person has any possessory interest in, or right to occupy the Property except under and pursuant to a Lease.

4.12.2 Right of Subordination. Notwithstanding anything in this Security Instrument to the contrary, Administrative Agent may, upon written notice to Borrower, elect to: (a) exclude from the assignment provided in this Security Instrument any of the Leases as specified in such notice so that the interest under such specified Lease is not assigned to Administrative Agent, for the ratable benefit of the Lenders; (b) subordinate the lien and other terms and provisions of this Security Instrument to any of the Leases as indicated in such notice to Borrower; and (c) require Borrower to use best efforts to obtain a subordination, nondisturbance and attornment agreement, in form and substance approved by Administrative Agent, from any of the tenants under any of the Leases as indicated in such notice to Borrower.

4.12.3 Security Deposits. Borrower shall maintain all security deposits collected from tenants or others with respect to the Property in accordance with all applicable legal requirements.

4.13 Condominium and Cooperative Provisions. If the Property is not subject to a recorded condominium plan, map or regime or a cooperative regime on the date of this Security Instrument, Borrower will not subject the Property or any portion thereof to such a plan, map or regime without the prior written consent of Administrative Agent, which consent may be granted or denied in Administrative Agent's sole discretion and, if granted, may be subject to such requirements as Administrative Agent may impose including but not limited to Borrower providing Administrative Agent and Lenders with such title insurance endorsements and other documents as Administrative Agent may require. If the Property is subject to a condominium regime on the date of this Security Instrument: (a) Borrower represents and warrants that none of the condominium units and no portion of the common elements in the Property have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (b) Borrower shall not in any way sell, convey or encumber or enter into a contract or agreement to sell, convey or encumber any condominium unit or any of the common elements of the Property unless expressly agreed to in writing by Administrative Agent; (c) Borrower shall operate the Property solely as a rental property; and (d) the Property granted, conveyed and assigned to Administrative Agent, for the ratable benefit of the Lenders, hereunder includes all rights, easements, rights of way, reservations and powers of Borrower, as owner, declarant or otherwise, under any applicable condominium act or statute and under any and all condominium declarations, survey maps and plans, association articles and bylaws and documents similar to any of the foregoing. If the Property is subject to a cooperative regime on the date of this Security Instrument: (i) Borrower represents and warrants that none of the corporate shares in the cooperative regime have been sold, conveyed or encumbered or are subject to any agreement to convey or encumber and that Borrower owns the entire fee simple interest in the Property; (ii) Borrower shall not in any way sell, convey or encumber or enter in a contract or agreement to sell, convey or encumber any of the corporate shares of the cooperative regime; and (iii) Borrower shall operate the Property solely as a rental property.

4.14 Use of Property; Zoning Changes. Unless required by applicable law or approved by Administrative Agent in writing, Borrower shall not: (a) allow changes in the use for

which all or any part of the Property is being used at the time this Security Instrument is executed; (b) convert any individual dwelling unit or common area in the Property to primarily commercial use or any commercial space or common area in the Property to primarily residential use; or (c) initiate or acquiesce in a change in the zoning classification of the Property.

4.15 Permits. The Property includes certain permits, licenses, certificates and approvals relating to the construction or operation of the Land and the existing and future Improvements ("Permits"). Upon the occurrence and during the continuance of a Default, Administrative Agent shall have the right but not the obligation, and Borrower hereby authorizes Administrative Agent, to enforce Borrower's rights with respect to the Permits and the other Property. Effective upon the occurrence and during the continuance of a Default, Borrower hereby irrevocably constitutes and appoints Administrative Agent as its attorney in fact, coupled with an interest, to demand, receive and enforce Borrower's rights with respect to the Permits and the other Property, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Administrative Agent with the same force and effect as if Borrower had performed such acts. Administrative Agent nor any Lender assumes any of Borrower's obligations or duties with respect to the Permits or any other Property, including, without limitation, the obligation to pay for the preparation or issuance thereof. Borrower represents and warrants that it has not previously conveyed, transferred or assigned the Permits or any other Property or any right, title or interest therein and has not executed any other instrument which might prevent or limit Administrative Agent from operating under the terms and provisions of this Section, and Borrower covenants and agrees not to do any of the foregoing.

4.16 Management of the Property. Lenders are making the Loan in part in reliance on the experience and reputation of the Property Manager. Borrower will provide Administrative Agent thirty (30) days' prior written notice if Borrower intends to retain another property management company to manage the Property and will not retain such replacement property management company without obtaining the prior written consent of Administrative Agent, which will not unreasonably be withheld. Administrative Agent reserves the right (a) to review and approve the proposed property management agreement between Borrower and the new property manager and any material changes thereto, including, but not limited to, changes in the responsibilities of the property manager, and (b) to require that the replacement property management company enter into such agreements with Administrative Agent as Administrative Agent may reasonably require. Borrower will submit such requests to Administrative Agent in writing.

4.17 Rights of Administrative Agent and Lenders. In addition to Administrative Agent's and Lenders' rights as a "Secured Party" under the UCC, Administrative Agent may, but shall not be obligated to, at any time without notice and at the expense of Borrower: (a) give notice to any Person of Administrative Agent's and/or Lenders' rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Property or any rights or interests of Administrative Agent and the Lenders therein; (c) inspect the Property; and (d) endorse, collect and receive any right to payment of money owing to Borrower under or from the Property. Notwithstanding the above, in no event shall Administrative Agent and/or any Lender be deemed to have accepted any property other than cash in satisfaction of any obligation

of Borrower to Administrative Agent and the Lenders unless Administrative Agent shall make an express written election of such remedy under the UCC or other applicable law.

5. Default.

5.1 **Definition.** Any of the following shall constitute a "Default" as that term is used in this Security Instrument:

- (a) Any "Default" (as defined in the Loan Agreement) occurs;
- (b) Borrower or any other signatory thereto shall default in the performance of any covenant or agreement contained in any mortgage, deed of trust, similar security instrument, lien or security interest encumbering any or all of the Property, or the note or any other agreement evidencing or securing the indebtedness secured thereby, which default continues beyond any applicable cure period.

5.2 **Administrative Agent's, any Lender's and Trustee's Right to Perform.**

After the occurrence and during the continuance of any Default, Administrative Agent, any Lender, or Trustee, but without the obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligations hereunder, may: make any payments or do any acts required of Borrower hereunder in such manner and to such extent as either may deem necessary to protect the security hereof, Administrative Agent, any Lender, or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Administrative Agent, any Lender, or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien in accordance with the following paragraph; and in exercising any such powers, pay necessary expenses and engage counsel. All sums so expended shall be payable by Borrower on demand, be secured hereby and bear interest at the Default Rate from the date advanced or expended until repaid and shall be payable by Borrower to Administrative Agent on demand.

Administrative Agent, any Lender, or Trustee, in making any payment herein, is hereby authorized, in the place and stead of Borrower, in the case of a payment of taxes, assessments, water rates, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Property, to make such payment in reliance on any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; in the case of any apparent or threatened adverse claim of title, lien, statement of lien, encumbrance, deed of trust, mortgage, claim or charge, Administrative Agent, any Lender, or Trustee, as the case may be, shall be the sole judge of the legality or validity of same; and in the case of a payment for any other purpose herein and hereby authorized, but not enumerated in this paragraph, such payment may be made whenever, in the sole judgment and discretion of Administrative Agent, any Lender, or Trustee, as the case may be, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Security Instrument, provided further, that in connection with any such advance, Administrative Agent at its option may and is hereby authorized to obtain a title endorsement or continuation report of title prepared by a title insurance company, the costs and expenses of which shall be repayable by Borrower without demand and shall be secured hereby.

5.3 Remedies on Default. Upon the occurrence of any Default, all sums secured hereby shall become immediately due and payable, without notice or demand, at the option of Administrative Agent or as otherwise provided in the Loan Agreement, and Administrative Agent may:

5.3.1 Have a receiver appointed as a matter of right on an *ex parte* basis without notice to Borrower (or at the option of Administrative Agent, with notice to Borrower) and without regard to the sufficiency of the Property or any other security for the indebtedness secured hereby and without the necessity of posting any bond or other security. Such receiver shall take possession and control of the Property and shall collect and receive the Rents. If Administrative Agent elects to seek the appointment of a receiver for the Property, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. The receiver shall be entitled to receive a reasonable fee for managing the Property, which fee may be deducted from the Rents or may be paid by Administrative Agent and/or Lenders and added to the indebtedness secured by this Security Instrument. Immediately upon appointment of a receiver, Borrower shall surrender possession of the Property to the receiver and shall deliver to the receiver all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Property and all security deposits. If the Rents are not sufficient to pay the costs of taking control of and managing the Property and collecting the Rents, any funds expended by Administrative Agent and/or any Lender, or advanced by Administrative Agent and/or any Lender to the receiver, for such purposes shall become an additional part of the indebtedness secured by this Security Instrument. The receiver may exclude Borrower and its representatives from the Property. Borrower acknowledges and agrees that the exercise by Administrative Agent or any Lender of any of the rights conferred under this Section 5.3 shall not be construed to make Administrative Agent or any Lender a mortgagee-in-possession of the Property so long as Administrative Agent or such Lender has not itself entered into actual possession of the Property.

5.3.2 Foreclose this Security Instrument pursuant to a judicial foreclosure proceeding or otherwise realize upon the Property.

5.3.3 Cause Trustee to exercise its power of sale.

5.3.4 Avail itself of any other right or remedy available to it under the terms of this Security Instrument, the other Loan Documents or applicable law, including, but not limited to, the right to conduct a unified sale of real and personal property collateral and the other rights and remedies under the UCC.

5.4 No Waiver re Late or Partial Payments. By accepting payment of any sum secured hereby after its due date, Administrative Agent nor any Lender waives its right either to require prompt payment when due of that or any other portion of the obligations secured by this Security Instrument. Administrative Agent may from time to time accept and apply any one or more payments of less than the full amount then due and payable on such obligations without waiving any Unmatured Default, Default, acceleration or other right or remedy of any nature whatsoever.

5.5 **Waiver of Marshaling, Etc.** In connection with any trustee's sale or other foreclosure sale under this Security Instrument, Borrower hereby waives, for itself and all others claiming by, through or under Borrower, any right Borrower or such others would otherwise have to require marshaling or to require that the Property be sold in parcels or in any particular order.

5.6 **Remedies Cumulative; Subrogation.** The rights and remedies accorded by this Security Instrument shall be in addition to, and not in substitution of, any rights or remedies available under now existing or hereafter arising applicable law. All rights and remedies provided for in this Security Instrument or afforded by law or equity are distinct and cumulative and may be exercised concurrently, independently or successively. The failure on the part of Administrative Agent or any Lender to promptly enforce any right hereunder shall not operate as a waiver of such right, and the waiver of any Unmatured Default or Default shall not constitute a waiver of any subsequent or other Unmatured Default or Default. Administrative Agent and Lenders shall be subrogated to the claims and liens of those whose claims or liens are discharged or paid with the Loan proceeds. Notwithstanding the foregoing, the exercise of all remedies is subject to procedures and limitations set forth by applicable state law.

6. **Condemnation, Etc.** Any and all awards of damages ("Awards"), whether paid as a result of judgment or prior settlement, in connection with any condemnation or other taking of any portion of the Property for public or private use, or for injury to any portion of the Property ("Condemnation"), are hereby assigned and shall be paid to Administrative Agent which may apply or disburse such Awards in the same manner, on the same terms, subject to the same conditions, to the same extent, and with the same effect as provided in Section 4.4 above for disposition of Insurance Proceeds. Unless otherwise instructed by Administrative Agent, regardless of whether the Awards are sufficient for the purpose, Borrower shall promptly commence and diligently pursue to completion in a good, workmanlike and lien-free manner the restoration, replacement and rebuilding of the Property as nearly as possible to its value, condition and character immediately prior to the Condemnation if any of the Award is made available to Borrower for such purpose. Without limiting the generality of the foregoing, if the Condemnation results in a loss of the Property to an extent that, in the reasonable opinion of Administrative Agent, renders or is likely to render the Property not economically viable or not as valuable as it would have been if no Condemnation had occurred, or if, in Administrative Agent's reasonable judgment, Administrative Agent's and/or Lenders' security is otherwise impaired or if a Default exists, Administrative Agent may apply the Awards to reduce the unpaid obligations secured hereby in such order as Administrative Agent may determine, and without any adjustment in the amount or due dates of installments due under the Loan Agreement. If so applied, any Awards in excess of the unpaid balance of the Note and other sums owing to Administrative Agent and the Lenders under the Loan Documents or otherwise shall be paid to Borrower or Borrower's assignee. Administrative Agent nor any Lender shall in no case be obligated to see to the proper application of any amount paid over to Borrower. Such application or release shall not cure or waive any Default or Unmatured Default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such notice. Immediately upon receiving written notice of the institution or threatened institution of any proceeding for a Condemnation, Borrower shall notify Administrative Agent of such fact. Borrower shall then file or defend its rights thereunder and prosecute the same with due diligence to its final disposition; provided, however, that Borrower shall not enter into any settlement of such proceeding without the prior approval of Administrative Agent. Administrative Agent shall be entitled, at its option, to appear in any such

proceeding in its own name, and upon the occurrence and during the continuation of a Default or if Borrower fails to diligently prosecute such proceeding, (a) Administrative Agent and/or any Lender shall be entitled, at its option, to commence, appear in and prosecute any such proceeding or to make any compromise or settlement in connection with such Condemnation and obtain all Awards or other relief therefor, on behalf of itself or Borrower, and (b) Borrower hereby irrevocably constitutes and appoints Administrative Agent as its attorney-in-fact, and such appointment is coupled with an interest, to commence, appear in and prosecute such action or proceeding or to make such compromise or settlement in connection with any such Condemnation on its behalf. The foregoing appointment is irrevocable, and such rights, powers and privileges shall be exclusive in Administrative Agent, its successors and assigns. Borrower agrees to pay Administrative Agent's and Lenders' costs and reasonable attorneys' fees incurred in connection therewith. Administrative Agent nor any Lender shall have no obligation to take any action in connection with any actual or threatened Condemnation or other proceeding.

7. **Trustee.**

7.1 **General Powers and Duties of Trustee.** At any time or from time to time, without liability therefor and without notice and without affecting the liability of any person for the payment of the indebtedness secured hereby, upon written request of Administrative Agent and payment of Trustee's fees, if any, Trustee may: (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Security Instrument or the lien or charge thereon; or (d) reconvey, without warranty, all or any part of the Property.

7.2 **Reconveyance.** Upon written request of Administrative Agent stating that all sums secured hereby have been paid, and upon payment of Trustee's fees, if any, Trustee shall reconvey, without warranty, the Property then held hereunder.

7.3 **Powers and Duties on Default.**

7.3.1 At any foreclosure sale, any person, including Trustor or Administrative Agent, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. For purposes of Utah Code Annotated § 57-1-28, Trustor agrees that all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note, Loan Agreement or other loan documents shall constitute a part of and be entitled to the benefits of Administrative Agent's Deed of Trust lien upon the Property, and Administrative Agent may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of either Note in its sole discretion, and in either case Administrative Agent may include all such amounts in any credit which Administrative Agent may make against its bid at a foreclosure sale of the Property pursuant to this Deed of Trust.

7.3.2 Upon the occurrence of any Default, Administrative Agent may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions or any other applicable procedure provided by applicable law at the time of the foreclosure:

(a) Trustee's Sale. Administrative Agent may execute a written notice of such Default and of the election to cause the Property to be sold to satisfy the obligations secured hereby, and Trustee shall give and record such notice as then required by *Utah Code Annotated* § 57-1-25 or other applicable law as a condition precedent to a trustee's sale. When the minimum period of time then required by *Utah Code Annotated* § 57-1-24 or other applicable law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as otherwise may then be required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels or through one or more successive sales and in such order as it or Administrative Agent may determine, at public auction to the highest bidder for cash, in lawful money of the United States, or other form of payment acceptable to Administrative Agent, payable at the time of sale. Subject to Trustor's statutory right under *Utah Code Annotated* § 57-1-27, Administrative Agent may, in its sole discretion, designate the order in which the Property is offered for sale or sold and determine if the Property shall be sold through a single sale or through two or more successive sales, or in any other manner Administrative Agent deems to be in its best interest. If Administrative Agent elects more than one sale or other disposition of the Property, Administrative Agent may at its option cause the same to be conducted simultaneously or in such order and at such times as Administrative Agent may deem to be in its best interests, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Property not then sold until all indebtedness secured hereby has been fully paid. If Administrative Agent elects to dispose of the Property through more than one sale, Trustor shall pay the costs and expenses of each such sale and of any judicial proceedings where the same may be undertaken. Subject to *Utah Code Annotated* § 57-1-27, Trustee may postpone any such sale by public announcement at the time and place fixed by the notice of sale, and may thereafter continue such postponement by like announcements at the time and place fixed by the preceding postponement, at Administrative Agent's direction and without necessity of additional notices of sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of time, date and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser at such sale a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in such Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Administrative Agent, may bid at the sale. Notwithstanding anything to the contrary contained herein, Trustee shall (to the extent permitted by applicable law) allocate or apply the proceeds of sale (including the amount of any credit bid) in such manner and in such priority as Administrative Agent may elect in its sole and absolute discretion, unless otherwise required by *Utah Code Annotated* § 57-1-29 or other applicable law. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Property, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the obligation secured hereby in the event of foreclosure of the liens hereby created, (c) subject to Section 8.24(l) with respect to the matters addressed therein, all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of Utah pertaining to the rights

and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce any obligation secured hereby, and (e) any rights, legal or equitable, to require marshalling of assets or to require foreclosure sales in a particular order, subject to *Utah Code Annotated* § 57-1-27. Administrative Agent shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Administrative Agent shall have the right to determine the order in which any of all portions of the obligations secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Trustor shall pay all reasonable costs, fees and expenses incurred by Trustee and Trustee's agents and counsel, including fees for accountings and reinstatement quotes as may be required by *Utah Code Annotated* Section 57-1-31.5, in connection with the performance by Trustee of Trustee's duties hereunder and all such costs, fees and expenses shall be secured by this Deed of Trust.

(b) Right to Require Proof of Financial Ability and/or Cash Bid. At any time during the bidding, Trustee may require a bidding party (i) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (ii) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with Trustee's requirement in this regard, or if such Questioned Bidder does respond but Trustee, in Trustee's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then Trustee may continue the bidding with reservation; and in such event (1) Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to Trustee, all bids by the Questioned Bidder shall be null and void. Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of Trustor and Administrative Agent, and elect to sell the Property for credit or for a combination of cash and credit; provided, however, that Trustee shall have no obligation to accept any bid except an all cash bid. In the event Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(c) Sale Subject to Unmatured Debt. In addition to the rights and powers of sale granted herein, if Default is made in the payment of any installment of the Secured Obligations, Administrative Agent may, at Administrative Agent's option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire amount of the Note to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Property subject to such unmatured Secured Obligations and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Secured Obligations, in the same manner, all as

provided in the preceding provisions of this subsection. Sales made without maturing the Secured Obligations may be made hereunder whenever there is a Default, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Secured Obligations or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Secured Obligations.

(d) Partial Foreclosure. Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Secured Obligations are paid in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Administrative Agent, sell not only the Land and the Improvements, but also the fixtures, personalty and other interests constituting a part of the Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(e) Trustee's Deeds. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Trustor, conveying the Property or any part thereof so sold to the purchaser or purchasers in "As is" condition without warranties, either express or implied. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Administrative Agent, the occurrence or existence of any Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Administrative Agent or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted absent manifest error, and Trustor does hereby ratify and confirm any and all acts that Trustee may lawfully do with respect to the Property by virtue hereof, but not any acts which constitute gross negligence, intentional misconduct or malfeasance or bad faith on the part of Trustee or his agents or employees.

(f) Administrative Agent as Purchaser. Upon any foreclosure sale or sales of all or any portion of the Property under the power of sale herein granted, Administrative Agent may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

(g) Substitute Trustee. In the event of the resignation or death of Trustee, or Trustee's failure, refusal, or inability, for any reason, to make any such sale or to perform any of the trusts herein declared, or, at the option of Administrative Agent, without cause, then Administrative Agent may appoint, by executing and recording a substitution of trustee in the official records of the county in which the Property is located, a substitute trustee, who shall thereupon succeed to all the rights, liens, and trusts herein granted to and

vested in Trustee. If Administrative Agent is a corporation, such appointment may be made on behalf of such Administrative Agent by any person who is then the president, or a vice-president, or the cashier or secretary, or any other authorized officer or agent, of Administrative Agent. In the event of the resignation or death of any such substitute trustee or his failure, refusal, or inability to make any such sale or perform such trusts, or, at the option of Administrative Agent, without cause, successive substitute trustees may thereafter, from time to time, be appointed in the same manner. Wherever herein the word "Trustee" is used the same shall mean the person who is the duly appointed trustee or substitute trustee hereunder at the time in question.

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

7.3.3 **Notice of Default; Notice of Sale.** Administrative Agent hereby requests, pursuant to Utah Code Annotated § 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in the preamble of this Deed of Trust.

7.4 **Reassignment of Security Interest.** At the request of Administrative Agent, Trustee shall reassign to Administrative Agent the security interest created hereby and after such reassignment Administrative Agent and/or any Lender shall have the right, upon the occurrence or continuance of any Default, to realize upon the personal property encumbered by this Security Instrument, independent of any action of Trustee, pursuant to the UCC.

7.5 **Acceptance of Trust.** Trustee accepts this trust when this Security Instrument, duly executed and acknowledged, is recorded in the real estate records of the county in which the Land is located. Trustee is not obligated to notify any party hereto except Administrative Agent of pending sale under any other deed of trust or of any action or proceeding in which Borrower, Administrative Agent, any Lender or Trustee shall be a party unless brought by Trustee.

7.6 **Reliance.** Trustee, upon presentation to it of a written request signed by Administrative Agent setting forth facts showing a Default, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

7.7 **Replacement of Trustee.** Administrative Agent may, from time to time, as provided by statute, appoint another trustee in place and stead of Trustee herein named, and thereupon Trustee herein named shall be discharged and the trustee so appointed shall be substituted as Trustee hereunder, with the same effect as if originally named Trustee herein.

7.8 **Deficiencies.** Trustor agrees to pay any deficiency, arising from any cause, to which Administrative Agent may be entitled after applications of the proceeds of any sale, and

Administrative Agent may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law.

8. **Notices.** Any notice to or demand on Borrower, Administrative Agent or any Lender in connection with this Security Instrument or the obligations secured hereby shall be given in accordance with Section 8.01 of the Loan Agreement, provided that any notice required by statute for any judicial or non-judicial foreclosure of this Security Instrument shall be given in accordance with such statute. Any notice to or demand on Trustee in connection with this Security Instrument shall be given in the manner provided for notices to Borrower, Administrative Agent and any Lender under Section 8.01 of the Loan Agreement at the respective address set forth in the first paragraph of this Security Instrument, provided that any party may change its address for notice by giving notice thereof to the other parties.

9. **Modifications, Etc.** Each Person now or hereafter owning any interest in the Property agrees, by executing this Security Instrument or taking the Property subject to it, that Administrative Agent may in its sole discretion and without notice to or consent of any such Person: (a) extend the time for payment of the obligations secured hereby; (b) discharge or release any one or more parties from their liability for such obligations in whole or in part; (c) delay any action to collect on such obligations or to realize on any collateral therefor; (d) release or fail to perfect any security for such obligations; (e) consent to one or more transfers of the Property, in whole or in part, on any terms; (f) waive or release any of holder's rights under any of the Loan Documents; (g) agree to an increase in the amount of such obligations or to any other modification of such obligations or of the Loan Documents; or (h) proceed against such Person before, at the same time as, or after it proceeds against any other Person liable for such obligations.

10. **Successors and Assigns.** All provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties, subject to the restrictions set forth in the Loan Documents on sales, leases, exchanges, conveyances, transfers, mortgages, assignments, pledges and encumbrances and other transactions by Borrower.

11. **Governing Law; Severability.** This Security Instrument and the other Loan Documents shall be construed in accordance with and governed by the internal laws (and not the law of conflicts) of the state where the Property is located, except to the extent preempted by federal laws applicable to national banks. Any provision of this Security Instrument or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

12. **Borrower's Right to Possession.** Borrower may be and remain in possession of the Property for so long as no Default exists and Borrower may, while it is entitled to possession of the Property, use the same.

13. **Maximum Interest.** The provisions of Section 8.11 (Interest Rate Limitation) of the Loan Agreement apply to any interest accruing or owing under this security interest or any other Loan Document.

14. **Attorneys' Fees and Legal Expenses.** In the event of any Default or Unmatured Default under this Security Instrument, or in the event that any dispute arises relating to the interpretation, enforcement or performance of any obligation secured by this Security Instrument, Administrative Agent shall be entitled to collect from Borrower on demand all reasonable fees and expenses incurred in connection therewith, including but not limited to reasonable fees of attorneys, accountants, appraisers, environmental inspectors, consultants, expert witnesses, arbitrators, mediators and court reporters. Without limiting the generality of the foregoing, Borrower shall pay all such costs and expenses incurred in connection with: (a) arbitration or other alternative dispute resolution proceedings, trial court actions and appeals; (b) bankruptcy or other insolvency proceedings of Borrower or any Person liable for any of the obligations secured by this Security Instrument or any party having any interest in any security for any of those obligations; (c) judicial or nonjudicial foreclosure on, or appointment of a receiver for, any of the Property; (d) post-judgment collection proceedings; (e) all claims, counterclaims, cross-claims and defenses asserted in any of the foregoing whether or not they arise out of or are related to this Security Instrument; (f) all preparation for any of the foregoing; and (g) all settlement negotiations with respect to any of the foregoing.

15. **Prepayment Provisions.** If, at any time after a Default and acceleration of the indebtedness secured hereby, there shall be a tender of payment of the amount necessary to satisfy such indebtedness by or on behalf of Borrower, its successors or assigns, the same shall be deemed to be a voluntary prepayment such that the sum required to satisfy such indebtedness in full shall include, to the extent permitted by law, any additional payment required for a prepayment as stated in the Loan Agreement and other Loan Documents.

16. **Time Is of the Essence.** Time is of the essence under this Security Instrument and the other Loan Documents and in the performance of every term, covenant and obligation contained herein and therein.

17. **Miscellaneous.**

17.1 Whenever the context so requires the singular number includes the plural herein, and the impersonal includes the personal.

17.2 The headings to the various sections have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Security Instrument.

17.3 This Security Instrument and the other Loan Documents constitute the final expression of the entire agreement of the parties with respect to the transactions set forth therein. No party is relying upon any oral agreement or other understanding not expressly set forth in the Loan Documents. No provision of this Security Instrument or any other Loan Document may be waived, amended or modified except pursuant to an agreement or agreements in writing executed by the party sought to be charged with such waiver, amendment or modification.

17.4 No Person shall be a third-party beneficiary of this Security Instrument or any other Loan Document.

17.5 The existence of any violation of any provision of this Security Instrument or the other Loan Documents (including but not limited to building or health code violations) as

of the date of this Security Instrument, whether or not known to Administrative Agent or any Lender, shall not be deemed to be a waiver of any of Administrative Agent's or Lenders' rights under any of the Loan Documents, including, but not limited to, Administrative Agent's and/or Lenders' right to enforce Borrower's obligations to repair and maintain the Property.

17.6 Borrower hereby waives to the fullest extent permitted by applicable law the right to plead, use or assert any statute of limitations as a plea, defense or bar of any kind, or for any purpose, to any obligation secured by this Security Instrument, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Security Instrument or any rights hereunder.

17.7 No merger shall occur as a result of Borrower's, Administrative Agent's and/or Lenders' acquisition of any other estate, right, title or interest in or in connection with the Property unless Administrative Agent consents to a merger in writing.

18. **Intentionally Omitted.**

19. **Request for Notice.** Borrower hereby requests that a copy of any notice of default and any notice of sale hereunder be mailed to it at the address set forth in the first paragraph of this Security Instrument.

20. **Waiver Of Jury Trial.** The parties hereto hereby agree to the provisions of Section 8.09 (WAIVER OF JURY TRIAL) of the Loan Agreement which are incorporated herein as if set forth herein in full.

21. **Mechanic's and Materialmen's Liens.**

21.1 Borrower 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. Borrower agrees to furnish due proof of such payment to Administrative Agent after payment and before delinquency.

21.2 Borrower shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Borrower shall cause Administrative Agent 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. Borrower shall also provide to Administrative Agent 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 Borrower.

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

21.4 If Administrative Agent or its title insurer determines that a preliminary notice has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Borrower shall provide to Administrative Agent written evidence acceptable to Administrative Agent and its title insurer that the lien claimant has accepted payment in full for construction work that the claimant furnished before the recording of this Deed of Trust 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 Deed of Trust.

21.5 Borrower shall cooperate with Administrative Agent and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Utah Code Annotated Section 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: Administrative Agent's name, address and telephone number, Borrower'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.

21.6 Borrower shall cause, as a condition precedent to the closing of the loan secured hereby, Administrative Agent's title insurer to insure in a manner acceptable to Administrative Agent in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Property free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Administrative Agent, 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.

21.7 Borrower shall pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon the Property (other than the Permitted Encumbrances), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted, provided, however, that Borrower shall have the right to contest any such claim or lien so long as Borrower 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, Borrower may (A) with the prior written consent of Administrative Agent, 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 Administrative Agent) for any such lien or claim, as determined in Administrative Agent's reasonable discretion.

21.8 If Borrower shall fail to remove and discharge any such lien, encumbrance or charge, or if Borrower shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Administrative Agent, Administrative

Agent 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 Borrower of and recording a notice of release of lien and substitution of alternate security in the name of Borrower, each as contemplated by Utah Code Annotated § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Borrower shall, immediately upon demand therefor by Administrative Agent, pay to Administrative Agent an amount equal to all costs and expenses incurred by Administrative Agent in connection with the exercise by Administrative Agent 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.

22. Water Rights.

22.1 Borrower shall diligently comply with all deadlines affecting the Water Rights imposed by law or regulation or any Governmental Authority, including but not limited to the Utah State Engineer or the Utah Division of Water Rights. As used in this Section 42, the term "Governmental Authorities" means the United States of America, the State of Utah, the Utah State Engineer or Utah Division of Water Rights, the County of Salt Lake, and any political subdivision, agency, department, commission, district, board, bureau or instrumentality of any of the foregoing, which now or hereafter has jurisdiction over Borrower or all or any portion of the real property subject to this Deed of Trust.

22.2 Borrower 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 Borrower cannot place any quantity of water under the Water Rights to a beneficial use, Borrower 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.

22.3 Borrower shall promptly provide the Lender with copies of any document relating to the Water Rights that is filed with the Utah State Engineer or Utah Division of Water Rights.

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

22.5 Borrower 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.

23. **Residential Status of Property.** Borrower acknowledges that the stated purpose for which this Deed of Trust is given is to construct residential rental property. Accordingly, to permit Administrative Agent to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Borrower agrees that promptly upon completion of the contemplated improvements, it will provide to a Administrative Agent 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. Borrower agrees to promptly update such written summary and

provide the same to Administrative Agent from time to time upon request from Administrative Agent. To further allow Administrative Agent to comply with *Utah Code Annotated* Section 57-1-25 and other applicable law, Borrower agrees to provide a written roll, copies of all tenant leases (if requested by Administrative Agent), a summary list of tenants and addresses by unit or apartment number within thirty days after the end of each of Administrative Agent's fiscal quarters, and more frequently at any time upon the request of Administrative Agent.

24. **State-Specific Provisions.** With respect to the Property (which Property is located in the State of Utah), notwithstanding anything contained herein to the contrary, Borrower waives any rights or benefits it may have by reason of the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation secured hereby and any defense based on Utah's so called one-action rule, *Utah Code Annotated* § 78B-6-901 (formerly codified at *Utah Code Annotated* § 78-37-1). Notwithstanding anything to the contrary, Borrower knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Borrower under *Utah Code Annotated* § 57-1-32 and any successor or replacement statute or any similar laws or benefits. This Security Instrument secures an obligation incurred for the construction of an improvement on land, and is a "construction mortgage" under *Utah Code Annotated* Section 20A 9a 334(8). Notwithstanding anything set forth in this Deed of Trust to the contrary, all rights, powers and remedies provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded or enforced under the provisions of any applicable law.

25. **No Other Agreements.** PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THIS DEED OF TRUST, THE NOTE AND OTHER LOAN DOCUMENTS GOVERNING, EVIDENCING AND SECURING THE INDEBTEDNESS SECURED HEREBY REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

[Remainder of this page intentionally left blank]

DATED as of the day and year first above written.

530 WEST LLC,
a Utah limited liability company

By: BRDBHP OZ JV I LLC,
a Delaware limited liability company

Its: Managing Member

By: DBHP Greektown LLC,
a Delaware limited liability company,

Its: Managing Member

By: HP Greektown LLC,
a Utah limited liability company,

Its: Manager

By: 
Name: Timothy Stephens
Its: Managing Member

STATE OF UTAH)
)
COUNTY OF SALT LAKE) SS
)

The foregoing instrument was acknowledged before me on OCTOBER 12, 2021, by
Timothy Stephens as Managing Member of HP Greektown LLC, a Utah limited liability
company. Stephens




Savannah Jane Millard
Notary Public
Residing at: SALT LAKE CITY, UT

My commission expires:

07/17/2025

[Signatures continue on next page.]

210 RIO LLC,
a Utah limited liability company

By: BRDBHP OZ JV I LLC,
a Delaware limited liability company

Its: Managing Member

By: DBHP Greektown LLC,
a Delaware limited liability company,

Its: Managing Member

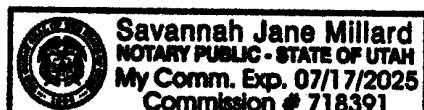
By: HP Greektown LLC,
a Utah limited liability company,

Its: Manager

By: _____
Name: Timothy Stephens
Its: Managing Member

STATE OF UTAH)
)
COUNTY OF SALT LAKE)
) SS

The foregoing instrument was acknowledged before me on OCTOBER 12, 2021, by
Timothy ~~XXXXXX~~ as Managing Member of HP Greektown LLC, a Utah limited liability
company.



Savannah
Notary Public
Residing at: SALT LAKE CITY, UT

My commission expires:

07/17/2025

EXHIBIT A-1

Cinq Legal Description

Lot 3, McCARTHEY'S SUBDIVISION, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder on June 9, 2015 as Entry No. 12067482 in Book 2015P at Page 128.

Tax Parcel No. 15-01-108-034

EXHIBIT A-2

Rio Legal Description

Beginning 57.5 feet East from the Northwest corner of Lot 5, Block 62, Plat "A", Salt Lake City Survey; thence East 206.5 feet; thence South 251 feet; thence West 186.5 feet; thence North 45 feet; thence West 20 feet; thence North 206 feet to the beginning.

Being also described of record as follows:

Beginning at the point of intersection of the West line of Rio Grande Street and the North line of Block 62, Plat "A", Salt Lake City Survey, which point is 68.5 feet South and 27.5 feet West from the Survey Monument lines in Second South Street and Rio Grande Street, and running thence West in the North line of said Block 62 a distance of 206.5 feet; thence South 206 feet; thence East 20 feet; thence South 45 feet; thence East 186.5 feet to a point 27.5 feet West from the monument line of said Rio Grande Street; thence North 251 feet to the point of beginning; said described lands being a part of Lots 5 and 6, Block 62, Plat "A", Salt Lake City Survey.

Tax Parcel No. 15-01-178-003