

Recording Requested by

Highland Title Agency, Inc.

When Recorded Mail to:

Seyfarth Shaw LLP
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017
Attention: Stacy N. Paek, Esq.

APN(s): 27-13-178-013

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TRD- TRUST DEED
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: HIGHLAND TITLE
6622 S 1300 ESALT LAKE CITY, UT 84121

(Space above line for Recorder's use)

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

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

This **DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Deed of Trust"), is made as of February 16, 2022, by **SJ UTAH, LLC**, a Utah limited liability company ("Trustor"), as trustor, having an office at c/o GMC Properties, 4821 Atlantic Blvd., Jacksonville, Florida 32207, to **HIGHLAND TITLE AGENCY, INC.**, a Utah corporation ("Trustee"), as trustee, having an office at 6622 South 1300 East, Salt Lake City, Utah 84121, in favor of **NEW YORK LIFE INSURANCE COMPANY**, a New York mutual insurance company ("Beneficiary"), as beneficiary, having an office at 51 Madison Avenue, New York, New York 10010-1603.

RECITALS:

A. Trustor has executed and delivered to Beneficiary a Promissory Note (together with all modifications, restatements, extensions and renewals thereof, the "Note"), dated as of February 16, 2022, payable to the order of Beneficiary in the original principal sum of Fifty-Four Million and No/100 Dollars (\$54,000,000.00), lawful money of the United States of America. GMC Turtle Creek, LLC, a Florida limited liability company ("Existing Borrower") executed a

joinder to the Note pursuant to which Existing Borrower became jointly and severally liable with Trustor for all obligations under the Note. The Note is secured by (i) this Deed of Trust and (ii) the Existing Deed of Trust (as hereinafter defined). The terms, covenants and conditions of the Note are hereby incorporated herein and made a part hereof.

B. Existing Borrower executed and delivered to Beneficiary a Promissory Note (together with the Existing Note Modification and all other modifications, restatements, extensions and renewals thereof, the "Existing Note"), dated as of February 7, 2020, payable to the order of Beneficiary in the original principal sum of Thirty Million and No/100 Dollars (\$30,000,000.00), lawful money of the United States of America, and concurrently herewith, Trustor and Existing Borrower are entering into a Note Modification Agreement and Allonge to Promissory Note (the "Existing Note Modification") pursuant to which Trustor shall be jointly and severally liable with Existing Borrower for all obligations under the Existing Note. From and after the date hereof, the Existing Note is secured by the Existing Deed of Trust and this Deed of Trust.

In consideration of the sum of Ten Dollars (\$10.00) paid and other good and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the Obligations (as hereinafter defined), Trustor hereby grants, assigns, releases, transfers, conveys, warrants, grants, pledges and sets over to Trustee, in trust, for the benefit of Beneficiary, with power of sale and right of entry and possession, all of Trustor's estate, right, title and interest in and to the following property:

GRANTING CLAUSE ONE

All that tract or parcel of land ("Land") more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

GRANTING CLAUSE TWO

All buildings, structures and improvements (collectively, "Improvements") now or hereafter located on the Land, including all machinery, apparatus, equipment and fixtures attached to, or used or procured for use in connection with the operation or maintenance of, any Improvement, all refrigerators, shades, awnings, venetian blinds, screens, screen doors, storm doors, storm windows, stoves, ranges, curtain fixtures, partitions, attached floor coverings and fixtures, apparatus, equipment or articles used to supply sprinkler protection and waste removal, laundry equipment, furniture, furnishings, appliances, office equipment, elevators, escalators, tanks, dynamos, motors, generators, switchboards, communication equipment, electrical equipment, television and radio systems, heating, plumbing, lifting and ventilating apparatus, air-cooling and air conditioning apparatus, gas and electric fixtures, fittings and machinery and all other personal property and equipment of every kind and description and all accessions, renewals and replacements thereof and all articles in substitution therefor, provided however, that the following shall be excluded: personal property of any Lessee (as hereinafter defined) that does not become the property of Trustor upon expiration or termination of the term of the Lease in question. Whether or not any of the foregoing are attached to the Land or any of the Improvements in any manner, all such items shall be deemed to be fixtures, part of the real estate and security for the Obligations. The Land and Improvements are herein collectively called

“Premises”. To the extent any of the Improvements are not deemed real estate under the laws of the State, they shall be deemed personal property and this grant shall include all of Trustor’s right, title and interest in, under and to such personal property and all other personal property now or hereafter attached to or located upon the Premises or used or useable in the management, maintenance or operation of the Improvements or the activities conducted on the Premises, including all computer hardware and software, but excluding personal property of any Lessee, unless such personal property becomes the property of Trustor upon expiration or termination of the Lease in question, and all accessions, renewals and replacements thereof and all articles in substitution therefor (collectively, “Personal Property”).

GRANTING CLAUSE THREE

All now or hereafter existing easements and rights-of-way and all right, title and interest of Trustor, in and to any land lying within the right-of-way of any street, opened or proposed, adjoining the Premises, any and all sidewalks, alleys and strips and gores of land, streets, ways, passages, sewer rights, waters, water courses, water rights and powers, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, air rights, development rights, covenants, conditions, restrictions, credits and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to, or above or below the Premises, whether now or hereafter existing.

GRANTING CLAUSE FOUR

All intangible rights, interests and properties of Trustor relating to the Premises or any part thereof, and necessary or desirable for the continued ownership, use, operation, leasing or management thereof, whether now or hereafter existing, including any trademarks, service marks, logos or trade names relating to the Premises or by which the Premises or any part thereof may be known and any other franchises or other agreements relating to services in connection with the use, occupancy, or maintenance of the Premises, instruments, actions or rights in action and all intangible property and rights relating to the Premises.

GRANTING CLAUSE FIVE

All accounts receivable, insurance policies, contract rights, interests, rights under all oil, gas and mineral leases and agreements and all benefits arising therefrom, and all other claims, both at law and in equity, relating to the Premises, which Trustor now has or may hereafter acquire.

GRANTING CLAUSE SIX

All estate, interest, right, title and other claim or demand which Trustor now has or may hereafter acquire in any and all awards or payments relating to the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including all awards resulting from a change of grade of any street and awards for severance damages, together, in all cases, with all interest thereon.

GRANTING CLAUSE SEVEN

All proceeds of, and any unearned premiums on, insurance policies covering all or any part of the Premises, including the right to receive and apply the proceeds of all insurance or judgments related to the Premises, or settlements made in lieu thereof.

GRANTING CLAUSE EIGHT

All estate, interest, right, title and other claim or demand which Trustor now has or may hereafter acquire against anyone with respect to any damage to all or any part of the Premises, including damage arising or resulting from any defect in or with respect to the design or construction of all or any part of the Improvements.

GRANTING CLAUSE NINE

All deposits or other security or advance payments, including rental payments, made by or on behalf of Trustor to others in connection with the Obligations or the ownership or operation of all or any part of the Premises, including any such deposits or payments made with respect to (a) Impositions (as hereinafter defined), (b) insurance policies, (c) utility service, (d) cleaning, maintenance, repair or similar services, (e) refuse removal or sewer service, (f) rental of equipment, if any, used by or on behalf of Trustor, and (g) parking or similar services or rights.

GRANTING CLAUSE TEN

All remainders, reversions or other estates in the Premises or any part thereof.

GRANTING CLAUSE ELEVEN

All management contracts, permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, now or hereafter issued or in any way furnished for the acquisition, construction, development, operation and use of the Land, the Improvements or the Leases, including building permits, environmental certificates, licenses, certificates of operation or occupancy, warranties and guaranties, except, in each case, to the extent that such mortgage, grant, assignment, transfer or pledge is restricted by the terms of such management contract, permit, certificate, license, approval, contract, entitlement or authorization and such restriction is enforceable under applicable law.

GRANTING CLAUSE TWELVE

All proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing, including personal property acquired with cash proceeds.

TO HAVE AND TO HOLD the Secured Property upon the trusts, covenants and agreements set forth herein.

DEFINITIONS AND INTERPRETATION

As used in this Deed of Trust, the following terms shall have the meanings specified below:

“Acceptable Delaware LLC” means a limited liability company formed under Delaware law which (a) has at least one springing member, which, upon the dissolution of all of the members of the limited liability company or the withdrawal or the disassociation of all of the members from the limited liability company, shall immediately become the sole member of such limited liability company, (b) has a duly-appointed Independent Director and (c) otherwise meets Beneficiary’s criteria applicable to such entities.

“Assignment” shall mean the Assignment of Leases, Rents, Income and Cash Collateral, dated as of the date hereof, from Trustor, as assignor, to Beneficiary, as assignee.

“Award” shall have the meaning set forth in Section 1.07A.

“Beneficiary’s Architect” shall mean a licensed architect or registered engineer approved by Beneficiary.

“Business Day” shall mean all days except Saturdays, Sundays and U.S. federal holidays.

“Code” shall mean the Uniform Commercial Code of the State.

“Condemnation Proceedings” shall have the meaning set forth in Section 1.07A.

“Cross Collateralization Agreement” shall mean that certain Cross Collateralization Agreement and Omnibus Amendment to Loan Instruments dated as of even date herewith by and among Trustor, Existing Borrower and Lender.

“Debt Coverage Ratio” shall mean, for any period, a fraction, the numerator of which shall equal the projected net operating income of the Premises for such period, and the denominator of which shall equal the aggregate of the principal and interest for such period with respect to the indebtedness due pursuant to the Note. Such calculation shall be as determined by Beneficiary.

“Delaware LLC Act” shall mean the Delaware Limited Liability Company Act (6 Del. C. § 18 101 et seq.), as amended from time to time.

“Environmental Claim” shall mean any asserted claim or demand, of any kind or nature, by any Person, for any actual or alleged Environmental Damage, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, ordinance or regulation, common law or otherwise.

“Environmental Damage” shall mean any and all claims, judgments, damages (including consequential and punitive damages), losses, penalties, interest, fines, liabilities (including strict liability), obligations, responsibilities, encumbrances, liens, costs and expenses, of whatever kind

or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including attorneys', experts' and consultants' fees and disbursements, including:

- (a) those relating to any investigation, defense or settlement of any claim, suit, administrative proceeding or investigation of any kind or any directive of any Governmental Agency (as hereinafter defined);
- (b) those relating to damages for personal injury, or injury to property including natural resources, occurring in, on, under or about the Secured Property, including lost profits and the cost of demolition and rebuilding of any improvements on real property;
- (c) diminution in the value of the Secured Property, and damages for the loss, or restriction on the use or adverse impact on the marketing, of the Secured Property or any part thereof;
- (d) loss of the priority of the lien of this Deed of Trust due to the imposition of a lien against the Secured Property;
- (e) those incurred in connection with the investigation, cleanup, remediation, removal, abatement, containment, closure, restoration, monitoring work or other cure of any violation of an Environmental Requirement required by any Governmental Agency or reasonably necessary to make full economic use of the Secured Property or in connection with any other property, including the performance of any pre-remedial studies and investigations and post remedial monitoring and cure, or any action to prevent a Release or threat of Release or to minimize the further Release of any Hazardous Material so it does not migrate or endanger or threaten to endanger public health or the environment; and
- (f) those incurred by reason of the existence on the Secured Property of mold, mildew, fungi, bacteria or other microbial matter.

"Environmental Requirements" shall mean any and all Legal Requirements (as hereinafter defined) relating to the protection of the environment, health or safety, including:

- (a) all Legal Requirements pertaining to reporting, licensing, permitting, investigation, remediation or removal of, or pertaining to Releases or threatened Releases of, Hazardous Materials, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes, whether solid, liquid or gaseous in nature, including Releases or threatened Releases into the air, soil, surface water, ground water or land;

- (b) all Legal Requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes, whether solid, liquid or gaseous in nature; and
- (c) all Legal Requirements pertaining to industrial hygiene or the protection of the health and safety of employees or the public.

“ERISA” shall have the meaning set forth in Section 2.11.

“Event of Default” shall have the meaning set forth in Section 3.01.

“Existing Assignment” shall mean that certain Assignment of Leases, Rents, Income and Cash Collateral dated as of February 7, 2020, from Existing Borrower, as assignor, to Beneficiary, as assignee, and recorded in the Official Records as Entry No. 13189442, in Book 10894, Page 1184, as the same has been modified by the Cross Collateralization Agreement.

“Existing Borrower” shall have the meaning set forth in the Recitals.

“Existing Collateral Property” shall mean the “Secured Property” described in the Existing Deed of Trust.

“Existing Deed of Trust” shall mean that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of February 7, 2020, from Existing Borrower, as trustor, in favor of Beneficiary and recorded in the Official Records as Entry No. 13189441 in Book 10894, Page 1123, as the same has been modified by the Cross Collateralization Agreement and a First Amendment to Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of even date herewith by and between Existing Borrower and Beneficiary.

“Existing Loan” shall mean that certain loan in the original principal sum of Thirty Million and No/100 Dollars (\$30,000,000.00) made by Beneficiary to Existing Borrower, evidenced by the Existing Note and secured by the Existing Deed of Trust.

“Existing Loan Instruments” shall mean the Existing Note, the Existing Deed of Trust, the Existing Assignment and each other.

“Existing Note” shall have the meaning set forth in the Recitals.

“Existing Obligations” shall mean the indebtedness, obligations, covenants, agreements and liabilities of the Existing Borrower to Beneficiary under the Existing Loan Instruments.

“Governmental Agency” shall mean any government, quasi-governmental or government sponsored enterprise, legislative body, commission, board, regulatory authority, bureau, administrative or other agency, court, arbitrator, grand jury or any other public body or entity or instrumentality, whether domestic, foreign, federal, state, county or municipal.

“Guarantor” shall mean any guarantor of all or any portion of the Obligations and any indemnitor (other than Trustor) under the Environmental Indemnity Agreement of even date herewith, executed by Trustor and such indemnitor in favor of Beneficiary or any subsequent Environmental Indemnity Agreement or similar agreement executed by Trustor and an indemnitor in favor of Beneficiary.

“Hazardous Materials” shall mean any substance:

- (a) the presence of which requires notification, investigation or remediation under any Environmental Requirement;
- (b) which is or becomes designated, defined, classified or regulated as “hazardous”, “toxic”, “noxious”, “waste”, “pollutant”, “contaminant” or other similar term, or which requires remediation or is regulated under any present or future Environmental Requirement, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), Federal Clean Air Act (42 U.S.C. Section 7401 et seq.), Federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.), Federal Clean Water Act (33 U.S.C. Section 1251 et seq.), Federal Environmental Pesticide Control Act (7 U.S.C. Section 136 et seq.), Federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Federal Safe Drinking Water Act (42 U.S.C. Sections 300(f), et seq.), and equivalent Environmental Requirements and any other state or federal environmental statutes and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future and all regulations issued pursuant thereto;
- (c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any Governmental Agency;
- (d) the presence of which on the Secured Property causes or threatens to cause a nuisance relating to the Secured Property or adjacent properties or poses or threatens to pose a hazard relating to the Secured Property or adjacent properties or to the health or safety of Persons on or about the Secured Property or adjacent properties;
- (e) which contains asbestos, gasoline, diesel fuel or other petroleum hydrocarbons, volatile organic compounds, polychlorinated biphenyls (PCBs) or urea formaldehyde foam insulation;

- (f) which contains or emits radioactive particles, waves or material, including radon gas;
- (g) which is or constitutes a part of an underground storage tank; and/or
- (h) which is or contains mold, mildew, fungi, bacteria or other microbial matter.

“Hazardous Materials Claims” shall have the meaning set forth in Section 1.05E(4).

“Imposition” and “Impositions” shall have the respective meanings set forth in Section 1.02A.

“Improvements” shall have the meaning set forth in Granting Clause Two.

“Increased Rate” shall have the meaning set forth in the Note.

“Indemnified Claims” shall have the meaning set forth in Section 1.05E(1).

“Independent Director” shall have the meaning set forth in Section 5.20U.

“Land” shall have the meaning set forth in Granting Clause One.

“Lease” and “Leases” shall have the respective meanings set forth in Section 1.08A.

“Legal Requirements” shall mean all present or future laws, statutes, permits, approvals, plans, authorizations, guidelines, franchises, ordinances, restrictions, orders, rules, codes, regulations, judgments, decrees, injunctions or requirements of all Governmental Agencies or any officers thereof, including any Board of Fire Underwriters.

“Lessee” and “Lessees” shall have the respective meanings set forth in Section 1.08A.

“Loan” shall mean the mortgage loan evidenced by the Note and secured by this Deed of Trust.

“Loan Instruments” shall mean the Note, this Deed of Trust, the Assignment, the Cross Collateralization Agreement and each other instrument now or hereafter given to evidence, secure, indemnify, guaranty or otherwise assure or provide for the payment or performance of the Obligations or otherwise executed in connection with the Loan by Trustor, Guarantor or any other Person liable for any of the Obligations.

“Make-Whole Amount” shall have the meaning set forth in the Note.

“Material Action” shall mean (a) any proposed insolvency or bankruptcy proceeding of Trustor or any SPE Principal, (b) any dissolution or liquidation of Trustor or any SPE Principal, and (c) any amendment or modification of any provision of Trustor’s or any SPE Principal’s organizational documents relating to its purpose or bankruptcy-remote status.

“Maturity Date” shall have the meaning set forth in the Note.

“Non-Recourse Exceptions” shall have the meaning set forth in the Note.

“Note” shall have the meaning set forth in the Recitals.

“Obligations” shall mean and include all indebtedness, obligations, covenants, agreements and liabilities of Trustor to Beneficiary, including all obligations to pay interest, the Make-Whole Amount and all charges and advances, whether direct or indirect, existing, future, contingent or otherwise, due or to become due, pursuant to or arising out of or in connection with the Note, this Deed of Trust, the Assignment or any other Loan Instrument, the Existing Note and the Cross Collateralization agreement all modifications, extensions and renewals of any of the foregoing and all expenses and costs of collection or enforcement, including attorneys’ fees and disbursements incurred by Beneficiary in the collection or enforcement of any of the Loan Instruments or in the exercise of any rights or remedies pursuant to the Loan Instruments or applicable law.

“OFAC” shall have the meaning set forth in Section 2.08.

“Official Records” shall mean the records of Salt Lake County, Utah Recorder.

“Person” shall mean a corporation, a limited or general partnership, a limited liability company or partnership, a joint stock company, a joint venture, a trust, an unincorporated association, a Governmental Agency, an individual or any other entity similar to any of the foregoing.

“Personal Property” shall have the meaning set forth in Granting Clause Two.

“Premises” shall have the meaning set forth in Granting Clause Two.

“Proceeds” shall have the meaning set forth in Section 1.03F(2).

“Release” shall mean any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the environment.

“Rents” shall mean all rents, “rents” as defined in the Utah Uniform Assignment of Rents Act, Utah Code Ann. Section 57-26-101 et seq. (the “Utah Act”), issues, profits, cash collateral, royalties, income and other benefits derived from the Secured Property or any part thereof (including benefits accruing from all present or future leases and agreements, including oil, gas and mineral leases and agreements).

“Secured Property” shall mean the Premises, the Personal Property and all other rights and interests described in the Granting Clauses of this Deed of Trust.

“SPE Principal” shall mean the special purpose entity that is (a) the general partner of Trustor, if Trustor is a limited partnership, or the managing member of Trustor, if Trustor is a limited liability company (other than an Acceptable Delaware LLC, for which no SPE Principal

shall be required) and (b) is an Acceptable Delaware LLC or a corporation that is a special purpose entity satisfying the requirements of Section 5.20.

“State” shall mean the State, Commonwealth or territory in which the Land is located.

“Transfer” shall have the meaning set forth in Section 1.11B.

As used in this Deed of Trust (a) words such as “herein”, “hereof”, “hereto”, “hereunder” and “hereby” or similar terms refer to this Deed of Trust as a whole and not to any specific Section or provision hereof; (b) wherever the singular or plural number or the masculine, feminine or neuter gender is used, it shall include each other number or gender; and (c) the word “including” shall mean “including, without limitation,” and the word “includes” shall mean “includes, without limitation.”

ARTICLE 1 COVENANTS AND AGREEMENTS

Trustor hereby covenants and agrees as follows:

1.01 Payment, Performance and Security. Trustor shall pay when due the amount of, and otherwise timely perform, all Obligations. This Deed of Trust shall secure all Obligations together with the obligation to pay the principal of and the interest on the indebtedness evidenced by any other promissory note executed by Trustor in connection with any future advances and stated by the terms thereby to be secured hereby.

1.02 Payment of Taxes, Assessments, etc.

1.02A. Impositions. Trustor shall pay when due and payable, before any fine, penalty, interest or cost for the nonpayment thereof may be added thereto, and without any right of offset or credit against any interest or other amounts payable to Beneficiary pursuant to this Deed of Trust or on the Note, all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, vault taxes or charges, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever (including penalties, interest costs and charges accrued or accumulated thereon), which at any time may be assessed, levied, confirmed, imposed upon, or become due and payable out of or in respect to, or become a lien on, the Secured Property or any part thereof, or any appurtenance thereto (all of the foregoing collectively, “Impositions” and individually, an “Imposition”).

1.02B. Installments. Notwithstanding anything to the contrary contained in Section 1.02A, if by law any Imposition, at the option of the taxpayer, may be paid in installments, and provided interest shall not accrue on the unpaid balance of such Impositions, Trustor may exercise the option to pay the same in installments and, in such event, shall pay such installments as the same become due and before any fine, penalty, interest or cost may be added thereto.

1.02C. Receipts. Trustor, upon request of Beneficiary, will furnish to Beneficiary within ten (10) days before the date when any Imposition would become delinquent,

official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Beneficiary, evidencing the payment thereof.

1.02D. Evidence of Payment. The bill, certificate or advice of nonpayment, issued by the appropriate official (designated by law either to make or issue the same or to receive payment of any Imposition), of the nonpayment of an Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill. Trustor shall pay Beneficiary, on demand, all charges, costs and expenses of every kind including each tax service search fee or charge incurred by Beneficiary at any time or times during the term of this Deed of Trust in connection with obtaining evidence satisfactory to Beneficiary that the payment of all Impositions is current and that there is no Imposition due and owing or which has become or given rise to a lien on the Secured Property or any part thereof or any appurtenance thereto.

1.02E. Payment by Beneficiary. If Trustor shall fail to pay any Imposition in accordance with the provisions of this Section 1.02, Beneficiary, at its option and at such time as it may elect, may pay such Imposition, but shall be under no obligation to do so. Trustor will repay to Beneficiary, on demand, any amount so paid by Beneficiary, with interest thereon at the Increased Rate from the date of such payment by Beneficiary to the date of repayment by Trustor. This Deed of Trust shall secure each such amount and such interest.

1.02F. Change in Law. In the event of the passage after the date of this Deed of Trust of any law deducting the Obligations from the value of the Secured Property or any part thereof for the purpose of taxation or resulting in any lien thereon, or changing in any way the laws now in force for the taxation of this Deed of Trust or the Obligations for state or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Beneficiary, then, and in such event, Trustor shall bear and pay the full amount of such taxes, provided that if for any reason payment by Trustor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the Loan or the Obligations wholly or partially usurious under any of the terms or provisions of the Note, this Deed of Trust or otherwise, Beneficiary may, at its option, declare all Obligations secured by this Deed of Trust, with interest thereon, to be immediately due and payable, or Beneficiary may, at its option, pay that amount or portion of such taxes as renders the Loan or the Obligations unlawful or usurious, in which event Trustor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of such taxes.

1.02G. Joint Assessment. Trustor shall not suffer, permit or initiate the joint assessment of the Premises and the Personal Property, or any other procedure whereby personal property taxes and real property taxes shall be assessed, levied or charged to the Secured Property as a single lien.

1.02H. Permitted Contests. Notwithstanding anything herein to the contrary, if, and for so long as, Trustor is not in default pursuant to any of the Loan Instruments, Trustor shall have the right to contest the amount or the validity, in whole or in part, of any Imposition, by appropriate proceedings diligently conducted in good faith and without cost or expense to Beneficiary. Subject to the provisions of Section 1.02I and provided Trustor is in compliance with the provisions of the next sentence, Trustor may postpone or defer payment of such

Imposition if Trustor, on or before the due date thereof, shall (1) deposit or cause to be deposited with Beneficiary a surety bond issued by a surety company of recognized responsibility acceptable to Beneficiary, guaranteeing and securing the payment in full of such Imposition, pending the determination of such contest, (2) deposit or cause to be deposited with Beneficiary an amount equal to one hundred percent (100%) of such Imposition or any balance thereof remaining unpaid, and from time to time, but not more frequently than quarterly, deposit amounts in order to keep on deposit at all such times an amount equal to one hundred percent (100%) of the Imposition remaining unpaid, or (3) furnish or cause to be furnished to Beneficiary other security reasonably satisfactory to Beneficiary. If such deposit is made or such security furnished and Trustor continues in good faith to contest the validity of such Imposition by appropriate legal proceedings which shall operate to prevent the collection of such Imposition so contested, the imposition of interest, fines or other penalties with respect to such Imposition and the sale of the Secured Property or any part thereof to satisfy such Imposition, Trustor shall have no obligation to pay such Imposition until such time as it has been finally determined to be a valid, due and payable Imposition. Upon termination of any such proceeding, or at any earlier time that Trustor shall have been adjudicated liable for the payment of such Imposition, Trustor shall pay in full the amount of such Imposition or part thereof as shall have been finally determined in such proceeding, together with all liabilities in connection therewith. Beneficiary shall have the full power and authority to apply or require the application of any amounts that may have been deposited pursuant to this Section 1.02H to payment of any unpaid Imposition. However, Beneficiary shall not have any liability for application of, or failure to apply, any amount so deposited, except for Beneficiary's intentional and willful failure to apply a deposited amount after Trustor shall have notified Beneficiary of such final decision and Trustor or the Person making such deposit shall have requested in writing the application of such amount to the payment of the particular Imposition with respect to which it was deposited. Beneficiary shall repay to Trustor, or as directed by Trustor, the remainder of any such deposit after payment in full of the related Imposition, unless Trustor shall be in default pursuant to any of the Loan Instruments. If a default then exists, Beneficiary may, in its discretion, apply all or any part of such remainder to the curing of such default. After the curing of all such defaults (and the payment in full of all then due and payable Impositions), Beneficiary shall pay the remainder of such surplus, if any, to Trustor.

1.02I. No Lease Default. If contesting the validity or amount of any Imposition shall cause a breach of any of the terms, conditions or covenants required to be performed by Trustor as lessor under any Lease, Trustor shall not have the right to contest the same as provided in Section 1.02H, and Trustor shall pay such Imposition pursuant to Section 1.02A.

1.03 Insurance.

1.03A. All Risk Coverage.

(1) Trustor, at its sole cost and expense, shall keep the Improvements and the Personal Property insured against loss or damage by fire and against loss or damage by other risks now covered by "All Risk" or "Special Perils" insurance, in form and substance satisfactory to Beneficiary. Such All Risk or Special Perils insurance shall cover acts of terrorism (both foreign and domestic) ("Terrorism Insurance") and earthquake insurance and windstorm insurance. If any of the Terrorism Insurance or earthquake insurance or windstorm

insurance is obtained through a separate insurance policy rather than as part of an All Risk or Special Perils policy, the requirements set forth herein with respect to All Risk or Special Perils insurance, nevertheless, shall be deemed to apply to any such insurance provided in a separate policy, including the rent and/or business interruption insurance described in Section 1.03A(3) below.

(2) The All Risk or Special Perils insurance shall be in an amount equal to at least one hundred percent (100%) of the full replacement cost of the Improvements and the Personal Property, including work performed for tenants, without deduction for depreciation, except that earthquake insurance will be based on a Scenario Upper Loss calculation. The "All Risk" or "Special Perils insurance" shall include coverage for law and ordinance, demolition and increased cost of construction and an agreed amount endorsement for the estimated replacement cost.

(3) The All Risk or Special Perils insurance (including any terrorism, earthquake or windstorm coverage included in such insurance) shall include rent and/or business income interruption insurance coverage, including coverage for rental loss (a) of not less than twenty-four (24) months of aggregate rentals or (b) Actual Loss Sustained, with no time element restrictions, and in the case of the coverage described in the preceding clause (a) or clause (b), an Extended Period of Indemnity of not less than twelve (12) months. The rental loss coverage with respect to each Lease shall include all Rent payable thereunder, including minimum rent, escalation charges, percentage rent and all other additional rent of every kind and any other amounts payable by tenants or other occupants, from time to time, at the Secured Property pursuant to Leases or otherwise.

1.03B. Additional Coverage. Trustor, at its sole cost and expense, shall at all times also maintain:

(1) Commercial general liability insurance against claims for bodily injury, personal injury or property damage, occurring in, on, under or about the Secured Property or in, on, under or about the adjoining streets, sidewalks and passageways; such insurance to be in amounts and in form and substance satisfactory to Beneficiary;

(2) If the Improvements are located in a flood hazard area, flood insurance on the Improvements and the Personal Property, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements and the Personal Property, including work performed for tenants, without deduction for depreciation and including rent and/or business interruption insurance as described in Section 1.03A(3) above;

(3) Insurance, in such amounts as Beneficiary shall from time to time require, against loss or damage from leakage or explosion of steam boilers, air conditioning equipment, pressure vessels or similar apparatus, now or hereafter installed in or on the Secured Property; and

(4) Such other insurance and any replacements, substitutions or additions thereto as shall at any time be required by Beneficiary against other insurable hazards,

including war risk, nuclear reaction or radioactive contamination, each in such amount as Beneficiary shall determine.

1.03C. Separate Insurance. Trustor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss with any insurance required hereunder. Trustor may, however, effect for its own account any insurance not required pursuant to the provisions of this Deed of Trust, but any such insurance effected by Trustor on the Secured Property, whether or not required pursuant to this Section 1.03, shall be for the mutual benefit of Trustor and Beneficiary, as their respective interests may appear, and shall be subject to all other provisions of this Section 1.03.

1.03D. Insurers; Policies.

(1) All insurance provided for in this Section 1.03 shall be effected under valid and enforceable policies issued by financially responsible insurers, rated by A.M. Best as "A" or better and as having a class size of at least "X(10)" and authorized to do business in the State, with deductibles acceptable to Beneficiary and otherwise in form and substance acceptable to Beneficiary; provided, however, the deductible that is specifically applicable to the earthquake insurance shall not be greater than five percent (5%) of the replacement cost value of the Secured Property, as determined by Beneficiary. An original copy of all such policies shall be deposited with and held by Beneficiary and shall contain the standard non-contributory mortgagee clause in favor of Beneficiary and a waiver of subrogation endorsement, all in form and content satisfactory to Beneficiary. All such policies shall contain a provision that such policies will not be cancelled or materially amended (including any reduction in the scope or limits of coverage), without at least thirty (30) days' prior written notice to Beneficiary. Not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Section 1.03, originals of the policies bearing notations evidencing the full payment of the annual premium or accompanied by other evidence satisfactory to Beneficiary of such payment shall be delivered by Trustor to Beneficiary.

(2) Trustor's insurance policies (including for earthquake insurance) may be part of a blanket insurance policy provided that (a) such blanket policy specifically lists the Secured Property as covered and includes the per occurrence and aggregate limits (if any) for the Secured Property, which limits must be acceptable to Beneficiary, (b) Beneficiary receives the documentation reasonably required to determine the adequacy of the shared blanket limits among the properties insured by the blanket policy, which documentation shall include, a list of the properties covered by the blanket policy, including the Secured Property, and their respective locations and a statement of insurable values for all Special Perils, for each of such properties, and a Catastrophe Loss Analysis by an independent, qualified catastrophe modeling firm, approved by Beneficiary, on an annual basis, and (c) the blanket policy includes an endorsement naming Beneficiary, with respect to any property insurance, as a certificate holder, mortgagee and lender loss payee and with respect to any liability insurance, as an additional insured.

1.03E. Beneficiary's Right to Secure Coverage. If Trustor fails to furnish to Beneficiary and keep in force the original policies of insurance required by this Section 1.03, Beneficiary, at its option, may procure such insurance, which procurement, at Beneficiary's further option, may be by the purchase of insurance policies or by the addition of the Secured

Property to Beneficiary's blanket policy. In the event that Beneficiary has exercised either of such options, promptly upon demand by Beneficiary, Trustor (i) will reimburse Beneficiary for all premiums on the policies purchased by Beneficiary or (ii) in the event Beneficiary has added the Secured Property to its blanket policy, will pay to Beneficiary an amount equal to the estimated cost of the insurance coverage which Beneficiary has added to its blanket policy had such coverage been obtained under a separate policy and not under a blanket policy, in either case, with interest thereon at the Increased Rate from the date Beneficiary pays such premiums to the date Trustor repays such premiums to Beneficiary in full. Until they are so repaid, this Deed of Trust shall secure the amount of such premiums and interest.

1.03F. Damage or Destruction. Upon the occurrence of any damage or casualty to the Secured Property or any part thereof, the following shall apply:

(1) Trustor shall give Beneficiary written notice of such damage or casualty as soon as possible, but not later than ten (10) days from the date such damage or casualty occurs.

(2) All proceeds of insurance ("Proceeds") paid or to be paid pursuant to any of the policies maintained pursuant to this Deed of Trust shall be payable to Beneficiary. Trustor hereby authorizes and directs any affected insurer to make payment of the Proceeds directly to Beneficiary. Beneficiary may commingle, with other monies in Beneficiary's possession, all Proceeds received by Beneficiary. All such Proceeds shall constitute additional security for the Obligations and Trustor shall not be entitled to the payment of interest thereon. Beneficiary may settle, adjust or compromise all claims for loss, damage or destruction pursuant to any policy or policies of insurance.

(3) Beneficiary shall have the option, in its discretion, and without regard to the adequacy of its security hereunder, of applying all or part of the Proceeds to (a) the Obligations, whether or not then due, in such order as Beneficiary shall determine, (b) the repair or restoration of the Secured Property, (c) reimburse Beneficiary for its costs and expenses in connection with the recovery of the Proceeds, or (d) any combination of the foregoing.

(4) Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Secured Property as provided in Section 1.05 or restoring all damage or destruction to the Secured Property, regardless of whether there are Proceeds available or whether the Proceeds are sufficient in amount, and the application or release by Beneficiary of any Proceeds shall not cure or waive any Event of Default or notice of default pursuant to this Deed of Trust or invalidate any act done pursuant to such notice.

1.03G. Transfer of Interest in Policies. In the event of the foreclosure of this Deed of Trust or other transfer of title or assignment of the Secured Property in payment and performance, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by this Section 1.03 shall inure to the benefit of, and pass to the purchaser or grantee of the Secured Property. If, prior to Beneficiary's receipt of the Proceeds, the Secured Property shall have been sold through the foreclosure of this Deed of Trust or other similar proceeding, Beneficiary shall have the right to receive the Proceeds to the extent that any portion of the Obligations are still unpaid after application of the proceeds of the

foreclosure sale or similar proceeding, together with interest thereon at the Increased Rate, plus attorney's fees and other costs and disbursements incurred by Beneficiary in connection with the collection of the Proceeds and in establishing the amount of and collecting the deficiency. Trustor hereby assigns, transfers and sets over to Beneficiary all of Trustor's right, title and interest in and to said sum. The balance, if any, shall be paid to Trustor, or as otherwise required by law.

1.03H. Trustor's Use of Proceeds.

(1) Notwithstanding any provision herein to the contrary, but subject to the provisions of Section 1.03H(4), in the event of any destruction to the Secured Property by fire or other casualty of not more than 10% of the leasable area of the Improvements, the Proceeds shall be made available to Trustor for repair and restoration, after deducting therefrom and payment to Beneficiary of an amount equal to Beneficiary's costs in connection with collection, review and disbursement of the Proceeds of such damage or casualty, provided that:

- (a) The Proceeds are deposited with Beneficiary;
- (b) No Event of Default shall have occurred and be continuing under the terms of any of the Loan Instruments;
- (c) The insurer does not deny liability to any named insured;
- (d) Beneficiary is furnished with, and has approved (i) a complete, final set of plans and specifications for the work to be performed in connection with the repair or restoration, (ii) an estimate of the cost of repair and restoration, and (iii) a certificate of Beneficiary's Architect as to such costs;
- (e) The value, quality and condition of the Secured Property so repaired or restored shall be at least equal to that of the Secured Property prior to such damage or casualty;
- (f) Trustor furnishes Beneficiary with evidence reasonably satisfactory to Beneficiary that all Improvements so repaired or restored and their use shall fully comply with all applicable (i) easements, covenants, conditions, restrictions or other private agreements or instruments of record affecting the Secured Property and (ii) Legal Requirements;
- (g) If the estimated cost of such repair or restoration exceeds the Proceeds available, Trustor shall (i) furnish a bond of completion or provide other evidence satisfactory to Beneficiary of Trustor's ability to pay such excess costs, or (ii) deposit with Beneficiary additional funds equal to such excess;
- (h) Beneficiary shall have received written notice of damage or casualty from Trustor within ten (10) days from the date of such damage or casualty, which notice shall state the date of such damage or casualty, and shall contain a request to Beneficiary to make the Proceeds available to Trustor;

(i) Beneficiary shall have received a report or proof of claim from the insurer describing the damage or casualty and the insurer's payment therefor;

(j) During and after the repair and restoration period, the aggregate monthly net income pursuant to rent and/or business income interruption insurance coverage and/or pursuant to all Leases remaining in full force and effect shall be in an amount sufficient to pay the monthly installments of principal and interest required to be paid on the Obligations, all payments for taxes and insurance required pursuant to Section 1.04 and all Secured Property operating expenses, as estimated by Beneficiary; and

(k) The Debt Coverage Ratio for both during and after the repair and restoration is not less than 1.20, taking into account for the repair and restoration period, proceeds of rent and/or business income interruption insurance.

(2) Beneficiary shall disburse the Proceeds during the course of repair or restoration upon (a) the certification of Beneficiary's Architect as to the cost of the work done, (b) the conformity, as determined by Beneficiary, of the work to plans and specifications approved by Beneficiary, and (c) receipt of evidence from a title insurance company acceptable to Beneficiary that there are no liens arising out of the repair or restoration or otherwise. Notwithstanding the above, a portion of the Proceeds may be released prior to the commencement of repair or restoration to pay for items approved by Beneficiary in its discretion. Subject to satisfaction of the foregoing conditions, Beneficiary shall make such disbursements within ten (10) Business Days after a written request by Trustor. No payment made prior to the final completion of work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of the Proceeds remaining with Beneficiary must be at least sufficient to pay for the cost of completion of the work (as estimated by Beneficiary in its discretion), free and clear of liens. Beneficiary shall make final payment after receipt of a certification of Beneficiary's Architect confirming the completion of the work in accordance with plans and specifications approved by Beneficiary.

(3) At its option, Beneficiary shall (a) return to Trustor the balance of the Proceeds after full disbursement in accordance with Sections 1.03H(1) and (2), or (b) apply such balance to the Obligations, whether or not then due, in such order as Beneficiary shall determine.

(4) In all cases in which any destruction of the Secured Property by fire or other casualty occurs during the last twelve (12) months prior to the Maturity Date, or in Beneficiary's judgment, Trustor is not proceeding with the repair or restoration in a manner that would entitle Trustor to have the Proceeds disbursed to it, or for any other reason Beneficiary determines in its judgment that Trustor shall not be entitled to the Proceeds pursuant to the terms of this Deed of Trust, Beneficiary shall have the options set forth in Section 1.03F(3).

(5) Under no circumstances shall Beneficiary become personally liable for the fulfillment of the terms, covenants and conditions contained in any of the Leases or obligated to take any action to repair or restore the Secured Property.

1.04 Escrow Payments. To further secure the Obligations as to payment of the Impositions (as set forth in Section 1.02) and premiums for insurance (as set forth in Section 1.03), Trustor will pay to Beneficiary, or its designee, on the due date of each monthly installment of principal and/or interest pursuant to the Note, a sum equal to the Impositions and insurance premiums next due on the Secured Property, all as estimated by Beneficiary, less all sums already paid with respect to the Impositions and insurance premiums for such period, divided by the number of months to elapse before one month prior to the date when such Impositions and insurance premiums shall become due and payable. Beneficiary or its designee shall hold all payments without any obligation for the payment of interest thereon to Trustor and free of all liens or claims on the part of creditors of Trustor and as a part of the Secured Property. Beneficiary or its designee shall use such payments to pay current Impositions and insurance premiums, as the same accrue and are payable. Such payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Beneficiary, or its designee. If at any time and for any reason Beneficiary determines that such payments are insufficient to pay the Impositions and insurance premiums in full as they become payable, Trustor will pay to Beneficiary or its designee, within ten (10) days after demand therefor, such additional sum or sums as may be required in order for Beneficiary or its designee to so pay such Impositions and insurance premiums in full. Trustor shall furnish Beneficiary with the bills therefor within sufficient time to enable Beneficiary or its designee to pay the Impositions and insurance premiums before any penalty attaches and before any policy lapses. Upon any default in the provisions of any Loan Instrument, Beneficiary may, at its discretion and without regard to the adequacy of its security hereunder, apply any unused portion of such payments to the payment of the Obligations in such manner as it may elect. Transfer of legal title to the Secured Property shall automatically transfer to the new owner any then remaining rights of Trustor in all sums held by Beneficiary pursuant to this Section 1.04.

1.05 Care and Use of the Premises.

1.05A. Maintenance and Repairs. Trustor, at its sole cost and expense, shall (1) take good care of the Secured Property and the sidewalks and curbs adjoining the Secured Property and keep the same in good order and condition, (2) make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, (3) not commit or suffer to be committed any waste of the Secured Property, and (4) not do or suffer to be done anything which will increase the risk of fire or other hazard to the Secured Property or any part thereof.

1.05B. Standard of Repairs. The necessity for and adequacy of repairs to the Secured Property pursuant to Section 1.05A shall be measured by the standard which is appropriate for a first class apartment project and related facilities of similar construction and type located in the South Jordan, Utah area. Further, Trustor shall make all repairs necessary to avoid any structural damage to the Improvements and to keep the Secured Property in a proper condition for its intended use. When used in this Section 1.05, the terms "repair" and "repairs" shall include all necessary renewals and replacements. Trustor shall make all repairs with new, first-class materials and in a good, substantial and workerlike manner which shall be equal or better in quality and class to the original work.

1.05C. Removal of Equipment. Trustor shall have the right, at any time and from time to time, to remove and dispose of equipment which may have become obsolete or unfit for use or which is no longer useful in the operation of the Secured Property. Trustor will promptly replace all equipment so disposed of or removed with other equipment of a value and serviceability equal to or greater than the original value and serviceability of the equipment so removed or disposed of, free of all liens, claims or other encumbrances. If by reason of technological or other developments in the operation and maintenance of buildings of the general character of the Improvements, no replacement of the building equipment so removed or disposed of is necessary or desirable in the proper operation or maintenance of the Improvements, Trustor shall not be required to replace same. The security interest of this Deed of Trust shall cover all such replacement equipment.

1.05D. Compliance With Laws and Insurance. Trustor shall promptly comply with any and all applicable Legal Requirements including maintaining the Secured Property in compliance with all Legal Requirements. Trustor shall not bring or keep any article upon the Secured Property or cause or permit any condition to exist thereon which would be prohibited by or could invalidate any insurance coverage maintained, or required hereunder to be maintained, by Trustor on or with respect to any part of the Secured Property. Trustor shall do all other acts, which from the character or use of the Secured Property may be necessary to protect the Secured Property. Upon request of Beneficiary, Trustor shall furnish to Beneficiary a copy of any license, permit or approval required by any Governmental Agency with respect to the Secured Property and/or the operations conducted thereon.

1.05E. Hazardous Materials.

(1) Trustor hereby unconditionally and irrevocably agrees to indemnify, reimburse, defend, exonerate, pay and hold harmless Beneficiary, and its directors, officers, policyholders, shareholders, employees, successors (including any successor to Beneficiary's interest in the chain of title), assigns, agents, attorneys, contractors, subcontractors, experts, licensees, visitors, affiliates, lessees, mortgagees, trustees and invitees, from and against any and all of the following (referred to collectively as the "Indemnified Claims"): all Environmental Damages and Environmental Claims that may be incurred by, imposed upon, or asserted against, any Person indemnified hereunder, arising out of, related to, or in connection with:

(a) the presence of Hazardous Materials in, on, under or about or the Release or threatened Release of any Hazardous Materials to or from (i) the Secured Property or (ii) any other property legally or beneficially owned (or any interest or estate which is owned) by Trustor, regardless of whether or not the presence of such Hazardous Materials arose prior to the present ownership or operation of the property in question or as a result of the acts or omissions of Trustor or any other Person,

(b) the violation or alleged violation of any Environmental Requirement affecting or applicable to the Secured Property or any activities thereon, regardless of whether or not the violation of such Environmental Requirement arose prior to the present ownership or operation of the property in question or as a result of the acts or omissions of Trustor or any other Person,

(c) the breach of any warranty or covenant or the inaccuracy of any representation contained in the Loan Instruments pertaining to Hazardous Materials or other environmental matters, including the covenants contained in Sections 1.05E(2), (3), (4) and (5) and the representations and warranties contained in Sections 1.05E(4) and 2.03C and D,

(d) the transport, treatment, recycling, storage or disposal or arrangement therefor, of any Hazardous Material to, at or from the Secured Property, or

(e) the enforcement or attempted enforcement of this indemnity.

Trustor's obligations pursuant to the foregoing indemnity shall include the burden and expense of (x) defending against all Indemnified Claims, even if such Indemnified Claims are groundless, false or fraudulent, (y) conducting all negotiations of any description with respect to the Indemnified Claims, and (z) paying and discharging any and all Indemnified Claims, when and as the same become due, against or from Beneficiary or any other Person indemnified pursuant to this Section 1.05E(1). Trustor's obligations under this Section 1.05E(1) shall survive (i) the repayment of all sums due under the Note; (ii) the release of the Secured Property or any portion thereof from the lien of this Deed of Trust; (iii) the reconveyance of or foreclosure under this Deed of Trust (notwithstanding that all or a portion of the obligations secured by this Deed of Trust shall have been discharged thereby); (iv) the acquisition of the Secured Property by Beneficiary; and/or (v) the transfer of all of Beneficiary's rights in and to the Note and/or the Secured Property.

(2) Trustor shall maintain the Secured Property in compliance with, and shall not cause or permit the Secured Property to be in violation of, any applicable Environmental Requirements. Trustor shall not, and shall not permit any lessee or occupant of the Secured Property to, use, generate, manufacture, store, maintain, dispose of or permit to exist in, on, under or about the Secured Property any Hazardous Materials. Trustor shall, at all times, comply fully and in a timely manner, and cause all of its employees, agents, contractors and subcontractors and any other Persons occupying or present on the Secured Property to so comply, with all applicable Environmental Requirements.

(3) Beneficiary shall have the right (but not the obligation) to cause an environmental site assessment or environmental audit of the Secured Property to be performed at Trustor's expense (a) if in Beneficiary's reasonable judgment, the Secured Property is not in compliance with all Environmental Requirements, (b) if an Event of Default has occurred, other than an Event of Default as to which Beneficiary in its sole discretion has accepted a cure or (c) without limiting the generality of the preceding clause (b), in connection with any action to foreclose the Deed of Trust. Trustor shall cooperate in the conduct of any such environmental site assessment or environmental audit and shall pay the cost of any such assessment or audit within ten (10) days of Beneficiary's demand for payment.

(4) Trustor represents and warrants that (a) no enforcement, cleanup, removal or other governmental or regulatory action has, at any time, been instituted, contemplated or threatened against Trustor, or to its best knowledge, the Secured Property, pursuant to any Environmental Requirements; (b) to the best of its knowledge, no violation or

noncompliance with any Environmental Requirements has occurred with respect to the Secured Property at any time; and (c) no claims have, at any time, been made or threatened by any third party against the Secured Property or against Trustor with respect to the Secured Property, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in this Section 1.05E(4)(a), (b) and (c) are herein referred to as "Hazardous Materials Claims"). Trustor shall promptly advise Beneficiary, in writing, if any Hazardous Materials Claims are hereafter asserted, or if Trustor obtains knowledge of any Release of any Hazardous Materials in, on, under or about the Secured Property.

(5) Without Beneficiary's prior written consent, Trustor shall not (a) take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Secured Property, or (b) enter into any settlement agreement, consent decree or other compromise in respect of any such Hazardous Materials or any Hazardous Materials Claims. However, Beneficiary's prior consent shall not be necessary in the event that the presence of any Hazardous Materials in, on, under or about the Secured Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Beneficiary's consent before taking such action. In such event, Trustor shall notify Beneficiary as soon as practical of any action so taken. Beneficiary shall not withhold its consent, where such consent is required hereunder, if either (x) a particular remedial action is ordered by a court of competent jurisdiction, or (y) Trustor establishes to the satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment to the Secured Property.

(6) Beneficiary, if it so elects, shall have the right to join and participate as a party in any legal proceedings or actions initiated by any Person in connection with any Hazardous Materials Claim and, in such case, Trustor shall pay all of Beneficiary's attorneys' fees and expenses incurred in connection therewith.

1.05F. Compliance With Instruments of Record. Trustor shall promptly perform and observe, or cause to be performed and observed, all terms, covenants and conditions of all instruments of record affecting the Secured Property, non-compliance with which may affect the priority of the lien of this Deed of Trust, or which may impose any duty or obligation upon Trustor or any lessee or other occupant of the Secured Property or any part thereof. Trustor shall do or cause to be done all things necessary to preserve intact and unimpaired all easements, appurtenances and other interests and rights in favor, or constituting any part, of the Secured Property.

1.05G. Alteration of Secured Property. Trustor shall not demolish, remove, construct, restore, add to or alter any portion of the Secured Property or any extension thereof, or consent to or permit any such demolition, removal, construction, restoration, addition or alteration without Beneficiary's prior written consent, except for (1) initial tenant improvement work provided for in any Lease in effect on the date hereof and in any other Lease approved by Beneficiary in writing, and (2) ordinary, non-structural maintenance work.

1.05H. Parking. Trustor shall comply with all Legal Requirements for parking and shall grant no parking rights in the Secured Property other than those provided for in existing Leases, except with Beneficiary's prior written consent. The Secured Property shall contain at all times not less than the greater of (i) a parking ratio of 1.78 parking spaces per unit, (ii) 438 below ground and heated parking spaces and 248 surface parking spaces, (iii) the number of parking spaces required from time to time by applicable law, and (iv) the number of parking spaces required by the then-current Leases. If any part of the automobile parking areas included within the Secured Property is taken by condemnation or such areas are otherwise reduced, Trustor shall provide parking facilities in kind, size and location as required to comply with all Leases and with the parking requirements set forth herein. Any lease or other contract for such facilities must be assignable and must be otherwise in form and substance satisfactory to Beneficiary. Before entering into any such lease or other contract, Trustor will furnish to Beneficiary satisfactory assurance of the completion of such facilities free of all liens and in conformity with all Legal Requirements.

1.05I. Entry on Secured Property. Beneficiary or its representatives may enter upon and inspect the Secured Property at all reasonable times.

1.05J. No Consent to Alterations or Repairs. Nothing contained in this Deed of Trust shall in any way constitute the consent or request of Beneficiary, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of the Secured Property or any part thereof.

1.05K. Preservation of Lien; Mechanic's Liens. Trustor shall do or cause to be done everything necessary so that the lien of this Deed of Trust shall be fully preserved, at the sole cost of Trustor. Trustor shall discharge, pay or bond, or cause to be discharged, paid or bonded, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a lien on the Secured Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom.

1.05L. Use of Secured Property by Trustor. Trustor shall use, or cause to be used, the Secured Property principally and continuously as and for a first-class apartment project. Trustor shall not use, or permit the use of, the Secured Property or any part thereof, for any other principal use without the prior written consent of Beneficiary. Trustor shall not initiate or acquiesce to any change in any zoning or other land use classification now or hereafter in effect and affecting the Secured Property or any part thereof without in each case obtaining Beneficiary's prior written consent thereto.

1.05M. Use of Secured Property by Public. Trustor shall not suffer or permit the Secured Property, or any part thereof, to be used by the public as such, without restriction or in such manner as might impair Trustor's title to the Secured Property or any part thereof, or in such manner as might make possible a claim or claims of adverse usage or adverse possession, or of any implied dedication to the public of the Secured Property or any part thereof.

1.05N. Management. Management of the Premises shall be satisfactory to Beneficiary and shall be performed by Trustor or a management company approved in writing by Beneficiary and under a management contract satisfactory to Beneficiary, which management contract shall be subject and subordinate to the rights and title of Beneficiary under this instrument.

1.06 Financial Information.

1.06A. Financial Statements. Trustor shall keep and maintain complete and accurate books and records of the earnings and expenses of the Secured Property. Trustor shall furnish to Beneficiary, at its own expense, within one hundred twenty (120) days after the end of each fiscal year and within thirty (30) days after the end of each fiscal quarter of Trustor (including the fiscal year during which the Loan is closed and including, as to quarterly financial statements, the fiscal quarter for which annual financial statements are also due), annual or quarterly audited financial statements, as applicable, prepared and certified by an independent certified public accountant reasonably satisfactory to Beneficiary, in accordance with generally accepted accounting principles relating to real estate consistently applied. Notwithstanding the foregoing, if Trustor is not then in default of any of the Obligations, the quarterly financial statements may be prepared and certified by any officer or other authorized party of Trustor. The annual and quarterly financial statements required hereunder shall include with respect to the Secured Property: (1) a balance sheet, (2) a statement of cash flows, (3) a detailed summary of operations, including, all rents and other income derived from and all operating and capital expenses paid or incurred in connection with the Secured Property and (4) a certified rent roll and other pertinent information regarding the leasing as may be reasonably required by Beneficiary. In addition to such financial statements, Trustor shall furnish to Beneficiary such interim statements of financial position and cash flows and such interim summaries of operations and interim rent rolls, including any of the information described in the foregoing clauses (1) through (4), as Beneficiary shall require. As to any Guarantor, and without any expense to Beneficiary, Trustor shall furnish, or cause to be furnished, to Beneficiary, within one hundred twenty (120) days after the end of each fiscal year and within thirty (30) days after the end of each fiscal quarter of each Guarantor, if any, including the fiscal year during which the Loan is closed and including, as to quarterly financial statements, the fiscal quarter for which annual financial statements are also due, annual or quarterly audited financial statements (as applicable) for each Guarantor, prepared and certified by an independent, certified public accountant, reasonably satisfactory to Beneficiary, including the issuance of an audit opinion on an Other Comprehensive Basis of Accounting (OCBOA), prepared in accordance with cash basis federal income tax accounting, consistently applied. Notwithstanding the foregoing, if Trustor is not then in default of any of the Obligations, the quarterly financial statements for Guarantor may be prepared and certified by Guarantor. Trustor shall also deliver the certifications required by Section 5.20 of this Deed of Trust within the same time frame set forth in this Deed of Trust or any other applicable Loan Instrument for the delivery of quarterly financial statements.

1.06B. Right to Inspect Books and Records. Beneficiary or its representatives shall have the right to examine and make copies of all books and records and all supporting vouchers and data related to the Secured Property. Such examination may occur at the Secured Property or at Trustor's principal place of business and shall be at Trustor's sole cost and expense.

1.07 Condemnation.

1.07A. Beneficiary's Right to Participate in Proceedings. If the Secured Property, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain (collectively, "Condemnation Proceedings"), Beneficiary shall have the right to participate in any such Condemnation Proceedings and all awards or payments (collectively, "Award") that may be made in any such Condemnation Proceedings are hereby assigned to Beneficiary, and shall be deposited with Beneficiary and applied in the manner set forth in this Section 1.07. Trustor shall give Beneficiary immediate notice of the actual or threatened commencement of any Condemnation Proceedings affecting all or any part of the Secured Property, including all such Condemnation Proceedings as to severance and consequential damage and change in grade in streets, and will deliver to Beneficiary copies of any and all papers served or received in connection with any Condemnation Proceedings. Notwithstanding the foregoing, Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute in its own or Trustor's name any action or proceeding relating to any Condemnation Proceedings and to settle or compromise any claim in connection therewith. No settlement for the damages sustained in connection with any Condemnation Proceedings shall be made by Trustor without Beneficiary's prior written approval. Trustor shall execute any and all further documents that may be required in order to facilitate the collection of each Award.

1.07B. Application of Condemnation Award.

(1) If at any time title or temporary possession of the whole or any part of the Secured Property shall be taken in any Condemnation Proceeding or pursuant to any agreement among Trustor, Beneficiary and/or those authorized to exercise the right of condemnation, Beneficiary, in its discretion and without regard to the adequacy of its security hereunder, shall have the right to apply any Award received to payment of the Obligations whether or not due, in such order as Beneficiary shall determine. If all or substantially all of the Secured Property is taken and the amount of the Award received by Beneficiary is not sufficient to pay the then unpaid balance of the Obligations, the balance of the Obligations shall, at the option of Beneficiary, become immediately due and payable and Trustor shall, within ten (10) days after notice to Trustor that Beneficiary has so applied the Award, pay the difference between such balance and the amount of the Award. "Substantially all of the Secured Property" shall be deemed to have been taken if the balance of the Secured Property, in the opinion of Beneficiary, (a) cannot be restored to a self-contained and architecturally complete unit or units or (b) the balance of the Secured Property as restored will not be economically viable and capable of supporting all carrying charges and operating and maintenance expenses.

(2) Notwithstanding any provision contained herein to the contrary, but subject to the provisions of Section 1.07B(3), if less than substantially all of the Secured Property shall be taken in a Condemnation Proceeding (except for a taking (a) of more than 10% of the leasable area of the Improvements so long as use of the remainder of the Improvements will not be impaired following restoration, (b) that reduces the number of parking spaces available to the Premises to a number that would violate applicable Legal Requirements with respect to parking at the Secured Property and/or Leases, and/or (c) that affects access to the Premises or any part thereof from a public right of way), so long as no Event of Default has occurred, other than an Event of Default as to which Beneficiary in its sole discretion has

accepted a cure, Beneficiary shall, after deducting Beneficiary's costs in connection with collection, review and disbursement related to the Award and the Condemnation Proceeding, apply the balance of the Award to the cost of restoring, repairing or altering the remaining portion of the Secured Property, subject to the provisions of Section 1.03H (which provisions shall apply in all respects except that any reference therein to Proceeds shall be deemed to refer to the Award), and Trustor will promptly restore, repair or alter the remaining Secured Property, subject to the provisions of Section 1.03H. The provisions of this Section 1.07B(2) shall not apply unless Trustor shall furnish to Beneficiary evidence satisfactory to Beneficiary that the Secured Property, as so restored, reconstructed or altered, and its use would fully comply with all Legal Requirements. The balance of the Award so deposited with Beneficiary, after disbursement in accordance with this Section 1.07B(2), shall be applied to the payment of the Obligations, whether or not due, in such order as Beneficiary shall determine. The Award and other sums deposited with Beneficiary, until disbursed or applied as provided in this Section 1.07B(2), may be commingled with the general funds of Beneficiary, shall constitute additional security for the Obligations, and shall not bear interest.

(3) In all cases in which any taking occurs during the last twelve (12) months prior to the Maturity Date, or in Beneficiary's judgment, Trustor is not proceeding with the repair or restoration in a manner that would entitle Trustor to have the Award disbursed to it, or for any other reason Beneficiary determines, in its judgment, that Trustor shall not be entitled to the Award pursuant to the terms of this Deed of Trust, Beneficiary, without regard to the adequacy of its security hereunder, shall have the right to apply the Award to payment of the Obligations, whether or not due, in such order as Beneficiary shall determine.

1.07C. Reimbursement of Costs. In the case of any taking covered by the provisions of this Section 1.07, Beneficiary (to the extent that Beneficiary has not been reimbursed therefor by Trustor) shall be entitled, as a first priority, to reimbursement out of any Award for all costs, fees, and expenses incurred in the determination and collection of the Award.

1.07D. Existing Obligations. Notwithstanding any taking by Condemnation Proceedings or any application of the Award to the Obligations, Trustor shall continue to pay the monthly installments due pursuant to the Note, as well as all other sums secured by this Deed of Trust. If prior to Beneficiary's receipt of the Award, the Secured Property shall have been sold through foreclosure of this Deed of Trust or other similar proceeding, Beneficiary shall have the right to receive the Award to the extent that any portion of the Obligations are still unpaid after application of the proceeds of the foreclosure sale or similar proceeding, with interest thereon at the Increased Rate, plus attorneys' fees and other costs and disbursements incurred by Beneficiary in connection with the collection of the Award and in establishing the amount of, and collecting, any deficiency. The application of the Award to the Obligations, whether or not then due or payable, shall not postpone, abate or reduce any of the periodic installments of interest or principal thereafter to become due pursuant to the Note or this Deed of Trust until the Obligations are paid and performed in full.

1.08 Leases.

1.08A. Performance of Lessor's Covenants. Trustor, as lessor, has entered and will enter into leases or licenses with tenants, as lessees or licensees, respectively, for parts or all of the Secured Property (all such leases and licenses are hereinafter referred to individually as a "Lease" and collectively as "Leases" and the lessees or licensees under such Leases are hereinafter referred to individually as a "Lessee" and collectively as "Lessees"). Trustor shall faithfully perform the lessor's covenants under the Leases. Trustor shall neither do, nor neglect to do, nor permit to be done (other than enforcing the terms of such Leases and exercising the lessor's remedies thereunder following a default or event of default on the part of any Lessee in the performance of its obligations pursuant to the Lease), anything which may cause the modification or termination of any of the Leases, or of the obligations of any Lessee or any other person claiming through such Lessee, or which may diminish or impair the value of any Lease or the rents provided for therein, or the interest of the lessor or of Beneficiary therein or thereunder. Each Lease shall make provision for the attornment of the Lessee thereunder to any person succeeding to the interest of Trustor as the result of any judicial or nonjudicial foreclosure or transfer in lieu of foreclosure hereunder, such provision to be in form and substance approved by Beneficiary, provided that nothing herein shall be construed to require Beneficiary to agree to recognize the rights of any Lessee under any Lease following any such foreclosure or transfer in lieu thereof unless Beneficiary shall expressly hereafter agree thereto in writing with respect to a particular Lease.

1.08B. Notice of Default. Trustor shall give Beneficiary immediate notice of any notice of a material default or of any Event of Default, extension, renewal, expansion, surrender or cancellation given to or received from any Lessee or from any other Person with respect to any Lease and shall furnish Beneficiary with a copy of each such notice.

1.08C. Representations Regarding Leases. Trustor represents and warrants that (1) all representations made by it in the Leases are true; (2) all Improvements and the leased space demised and let pursuant to each Lease have been completed to the satisfaction of the applicable Lessee; (3) each Lessee is in possession of its leased space, has opened for business and has commenced payment of Rent under its Lease; (4) all Rents and other charges due and payable under the Leases have been paid; (5) no Rent has been prepaid, except as expressly provided pursuant to the applicable Lease; (6) there is no existing default or breach of any covenant or condition on the part of any Lessee or lessor under any Lease; (7) there are no options to purchase all or any portion of the Secured Property contained in any Lease; (8) there are no options to renew, cancel, extend or expand by any Lessee except as stated in the Leases; (9) there are no amendments of or modifications to any Leases except as disclosed in writing to Beneficiary; (10) Trustor is the absolute owner of each Lease with full right and title to assign the same and the Rents thereunder to Beneficiary; (11) each Lease is valid and in full force and effect; (12) there is no outstanding assignment or pledge thereof or of the Rents due or to become due; (13) no Lessee has any defense, set-off or counterclaim against Trustor; (14) no Rents payable pursuant to any Lease have been or will be anticipated, discounted, released, waived, compromised or otherwise discharged, except as may be expressly permitted by such Lease; (15) all residential Leases are subject and subordinate to this Deed of Trust; and (16) Trustor has delivered to Beneficiary true and correct copies of all of the Leases.

1.08D. Covenants Regarding Leases. Trustor shall not, without the prior written consent of Beneficiary obtained in each instance:

(1) lease or permit the leasing, to any Person, all or any part of the space in, on or over any of the Premises, except residential Leases for actual occupancy by the Lessee made in the ordinary course of the business of owning and operating a first-class apartment project in a prudent manner, on Trustor's standard lease form, approved by Beneficiary, without material deviation therefrom;

(2) cancel, terminate or accept a surrender or suffer or permit any cancellation, termination or surrender of any Lease or any guaranty of any Lease except, with respect to any residential Lease, in the ordinary course of business of owning and operating a first class apartment project in a prudent manner;

(3) modify or amend any Lease except the modification or amendment of a residential Lease made in the ordinary course of the business of owning and operating a first-class apartment project in a prudent manner, which modification or amendment does not materially deviate from Trustor's standard lease form approved by Beneficiary;

(4) commence any summary proceeding or other action to recover possession of any space demised pursuant to any Lease, except in the ordinary course of the business of owning and operating a first-class apartment project in a prudent manner;

(5) receive or collect, or permit the receipt or collection of, any Rents for more than one month in advance of the payment due dates;

(6) take any other action with respect to any Lease which would tend to impair the security of Beneficiary pursuant to this Deed of Trust or the Assignment;

(7) extend any Lease other than in accordance with the terms presently provided for therein; except residential Leases for actual occupancy by the Lessee made in the ordinary course of business of owning and operating a first-class apartment project in a prudent manner;

(8) execute any agreement or instrument or create or permit a lien which may be or become superior to any Lease;

(9) suffer or permit to occur any release of liability of any Lessee or the accrual of any right in any Lessee to withhold payment of any Rent;

(10) sell, assign, transfer, mortgage, pledge or otherwise dispose of or encumber, whether by merger, consolidation, operation of law or otherwise, any Lease or any Rents;

(11) alter, modify or change the terms of any guaranty of any Lease or consent to the release of any party thereto, except in the ordinary course of the business of owning and operating a first-class apartment project in a prudent manner;

(12) request, consent, agree to, or accept, the subordination of any Lease to any mortgage (other than this Deed of Trust) or other encumbrance now or hereafter affecting the Premises; or

(13) consent to the assignment of any Lease or any subletting of the Premises demised pursuant to any Lease, except with respect to any residential Lease, in the ordinary course of business of owning and operating a first-class apartment project in a prudent manner.

1.08E. Application of Rents. Trustor shall use and apply all Rents from the Secured Property first to the payment and performance of the Obligations in accordance with the terms of the Loan Instruments, and then to the payment of all Impositions and the costs and expenses of management, operation, repair, maintenance, preservation, reconstruction and restoration of the Secured Property in accordance with the requirements of this Deed of Trust and the obligations of Trustor as the lessor under any Lease. Trustor shall not use any Rents for purposes unrelated to the Secured Property unless and until all current payments of the Obligations, Impositions and such costs and expenses have been paid or provided for and adequate cash reserves have been set aside to ensure the timely future payment of all such items.

1.08F. Indemnity Against Unapproved Lease Modifications and Amendments. In the event that Beneficiary or any grantee or assignee of Beneficiary takes title to, or otherwise comes into possession of, the Secured Property and thereafter a Lessee under a Lease attorns to Beneficiary or such other party pursuant to a Subordination, Non-Disturbance and Attornment Agreement entered into by Beneficiary and such Lessee, Trustor hereby indemnifies and holds Beneficiary harmless from and against any and all claims, liabilities, costs and expenses of any kind or nature against or incurred by Beneficiary arising out of the enforcement by any Lessee against Beneficiary or any grantee or assignee of Beneficiary, of any affirmative claim, cost or expense, or any defense, abatement or right of set off under any modification or amendment to a Lease which is binding upon Beneficiary and which was entered into by Trustor after the date of this Deed of Trust in violation of the requirements of subsection 1.08D hereof.

1.09 Assignment of Leases, Rents, Income, Profits and Cash Collateral.

1.09A. Assignment; Discharge of Obligations. Trustor hereby unconditionally, absolutely and presently bargains, sells, grants, assigns, releases and sets over unto Beneficiary (1) all Leases and all other tenancies, occupancies, subleases, franchises and concessions of the Land or Improvements or which in any way affect the use or occupancy of all or any part of the Land or Improvements, and any other agreements affecting the use and occupancy of all or any part of the Land or Improvements, in each case, whether now or hereafter existing, and all right, title and interest of Trustor thereunder, including all rights to all security or other deposits, (2) all guarantees of the obligations of any lessee, licensee or other similar party under any of the foregoing, whether now or hereafter existing, and (3) the Rents, regardless of whether the Rents accrue before or after foreclosure or during the full period of redemption. For the aforesaid purpose, Trustor does hereby irrevocably constitute and appoint Beneficiary its attorney-in-fact, in its name, to receive and collect all Rents, as the same accrue, and, out of the amount so collected, Beneficiary, its successors and assigns, are hereby authorized (but not obligated) to pay and discharge the Obligations (including any accelerated Obligations) in such order as

Beneficiary may determine and whether due or not, and to pay the remainder, if any, to Trustor, or as otherwise required by law. Neither this assignment nor any such action shall constitute Beneficiary as a "mortgagee in possession" or otherwise make Beneficiary responsible or liable in any manner with respect to the Secured Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Beneficiary, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Secured Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Secured Property or any part thereof by such receiver, be deemed to make Beneficiary a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Secured Property or the use, occupancy, enjoyment or operation of all or any portion thereof. The assignment of all Leases and Rents in this Section 1.09 is intended to be an absolute, unconditional and present assignment from Trustor to Beneficiary and not merely the passing of a security interest. Trustor shall, at any time or from time to time, upon request of Beneficiary, execute and deliver any instrument as may be requested by Beneficiary to further evidence the assignment and transfer to Beneficiary of Trustor's interest in any Lease or Rents. Nothing herein shall in any way limit Beneficiary's remedies or Trustor's Obligations under the Assignment.

1.09B. Entry Onto Secured Property; Lease of Secured Property. Beneficiary, at its option, may enter and take possession of the Secured Property and manage and operate the same as provided in Section 4.01, such management and operation to include the right to enter into Leases and new agreements and to take any action which, in Beneficiary's judgment, is necessary or proper to conserve the value of the Secured Property. The expenses (including any receiver's fees, attorneys' fees and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Beneficiary shall not be liable to account to Trustor for any action taken pursuant hereto other than to account for any Rents actually received by Beneficiary.

1.09C. License to Manage Secured Property. Notwithstanding anything to the contrary contained in Section 1.09A or Section 1.09B, so long as there shall exist no Event of Default hereunder, Trustor shall have the license to manage and operate the Secured Property, including the right to enter into Leases, and collect all Rents as they accrue (but not more than one month in advance).

1.09D. Delivery of Assignments. Trustor shall execute such additional documents as may be requested from time to time by Beneficiary, to evidence the assignment to Beneficiary or its nominee of any Leases now or hereafter made, such assignment documents to be in form and content acceptable to Beneficiary. Trustor shall deliver to Beneficiary, within thirty (30) days after Beneficiary's request (1) a duplicate original or photocopy of each Lease which is at the time of such request outstanding upon the Secured Property and (2) a complete schedule, certified by Trustor, of each Lease, showing the unit number, type, Lessee name, monthly rental, date to which Rents have been paid, term of Lease, date of occupancy, date of expiration, existing defaults, if any, and every special provision, concession or inducement granted to such Lessee.

1.09E. Indemnity. Trustor shall assert no claim or liability related to Beneficiary's exercise of its rights pursuant to this Section 1.09. Trustor expressly waives all

such claims and liabilities. Trustor hereby holds Beneficiary harmless from and against any and all claims, liabilities and expenses of any kind or nature against or incurred by Beneficiary arising out of Beneficiary's exercise of its rights pursuant to this Section 1.09, including Beneficiary's management, operation or maintenance of the Secured Property or the collection and disposition of Rents.

1.09F. Utah Act. This Section 1.09 is subject to the Utah Act, and in the event of any conflict or inconsistency between the provisions of this Section 1.09 and the provisions of the Utah Act, the provisions of the Utah Act shall control and Beneficiary shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder. To the extent the assignment set forth in Section 1.09A hereof is deemed to be a collateral assignment under the Utah Act, such assignment shall secure the payment and performance of the Obligations.

1.10 Further Assurances.

1.10A. General; Appointment of Attorney-in-Fact. Upon request by Beneficiary, from time to time, Trustor shall prepare, execute and deliver, or cause to be prepared, executed and delivered, to Beneficiary, all instruments, certificates and other documents which may, in the opinion of Beneficiary, be necessary or desirable in order to effectuate, complete, perfect or continue and preserve the Obligations and the lien of this Deed of Trust. Upon any failure by Trustor to do so, Beneficiary may prepare, execute and record any such instruments, certificates and documents for and in the name of Trustor and Trustor hereby appoints Beneficiary the agent and attorney-in-fact of Trustor for such purposes. This power is coupled with an interest and shall be irrevocable so long as any part of the Obligations remain unpaid or unperformed. Trustor shall reimburse Beneficiary for all sums expended by Beneficiary in preparing, executing and recording such instruments, certificates and documents and such sums shall be secured by this Deed of Trust.

1.10B. Statement Regarding Obligations. Trustor shall, within ten (10) days after request by Beneficiary, furnish Beneficiary with a written statement, duly acknowledged, setting forth (1) the unpaid principal balance of the Loan and the accrued but unpaid interest thereon, (2) whether or not any setoffs or defenses exist against the payment of such principal or interest, and (3) if such setoffs or defenses exist, the particulars thereof.

1.10C. Additional Security Instruments. Trustor, from time to time and within fifteen (15) days after request by Beneficiary, shall execute, acknowledge and deliver to Beneficiary such chattel mortgages, security agreements, or other similar security instruments, in form and substance satisfactory to Beneficiary, covering all property of any kind whatsoever owned by Trustor or in which Trustor may have any interest which, in the opinion of Beneficiary, is necessary to the operation and maintenance of the Secured Property or is otherwise a part of the Secured Property. Trustor, from time to time and within fifteen (15) days after request by Beneficiary, shall also execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement, supplementary mortgage or other document as Beneficiary may request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Deed of Trust or such chattel mortgage or other security instrument, as a first lien. Trustor shall pay to Beneficiary on demand

all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing and refiling of any such instrument or document, including charges for examining title and attorneys' fees and expenses for rendering an opinion as to the priority of this Deed of Trust and of each such chattel mortgage or other security agreement or instrument as a valid and subsisting first lien on such property. Neither a request so made by Beneficiary, nor the failure of Beneficiary to make such a request, shall be construed as a release of such property, or any part thereof, from the lien of this Deed of Trust. This covenant and each such mortgage, chattel or other security agreement or instrument, delivered to Beneficiary are cumulative and given as additional security. Trustor shall pay all premiums and related costs in connection with any title insurance policy or policies in full or partial replacement of the title insurance policy now insuring or which will insure the lien of this Deed of Trust.

1.10D. Security Agreement. This Deed of Trust shall constitute a security agreement under Chapter 9a of the Code with respect to the Personal Property covered by this Deed of Trust. Trustor does hereby grant to Beneficiary a security interest in the Personal Property and fixtures constituting Secured Property and in all additions and accessions thereto, substitutions therefor and proceeds thereof for the purpose of securing all Obligations now or hereafter secured by this Deed of Trust. The following provisions relate to such security interest:

(1) The Personal Property includes all now existing or hereafter acquired or arising equipment, inventory, accounts, chattel paper, instruments, documents, deposit accounts, investment property, letter-of-credit rights, commercial tort claims, supporting obligations and general intangibles now or hereafter used or procured for use on the Premises or otherwise relating to the Premises. If Trustor shall at any time acquire a commercial tort claim relating to the Premises, Trustor shall immediately notify Beneficiary in a writing signed by Trustor of the brief details thereof and grant to Beneficiary a security interest therein and in the proceeds thereof.

(2) Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the collateral as "all assets used or procured for use or otherwise relating to" the Premises or "all assets of the debtor" or words of similar effect, or as being of equal or lesser scope or in greater detail, and to indicate the Premises as defined, or in a manner consistent with the term as defined, in this Deed of Trust and (b) contain any other information required by part 5 of Chapter 9a of the Uniform Commercial Code of the filing office for the sufficiency or filing office acceptance of any initial financing statement or amendment, including whether Trustor is an organization, the type of organization and any organizational identification number issued to Trustor. Trustor agrees to provide any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Beneficiary to have filed in any filing office in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof. Trustor shall pay to Beneficiary, from time to time, upon demand, any and all costs and expenses incurred by Beneficiary in connection with the filing of any such initial financing statements and amendments, including attorneys' fees and all disbursements. Such costs and expenses shall bear interest at the Increased Rate from the date paid by Beneficiary until the date repaid by Trustor and such costs and expenses together with such interest, shall be part of the Obligations and shall be secured by this Deed of Trust.

(3) Trustor shall any time and from time to time take such steps as Beneficiary may reasonably request for Beneficiary to obtain “control” of any Personal Property for which control is the required method to perfect or to insure priority of the security interest in such Personal Property granted hereby.

(4) Upon the occurrence of an Event of Default, Beneficiary shall have the rights and remedies of a secured party under the Code as well as all other rights and remedies available at law or in equity or under this Deed of Trust.

(5) This Deed of Trust also constitutes a fixture filing filed as a fixture filing under Chapter 9a of the Code, covering any Secured Property that now is or later may become fixtures attached to the Land or Improvements.

(6) If Trustor does not have an organizational identification number and later obtains one, Trustor shall forthwith notify Beneficiary of such organizational identification number.

(7) Terms defined in the Code and not otherwise defined in this Deed of Trust have the same meanings in this Section 1.10D as are set forth in the Code. In the event that a term is used in Chapter 9a of the Code and also in another Article or Chapter of the Code, the term used in this Section 1.10D is that used in Chapter 9a. The term “control”, as used in this Paragraph, has the meaning given in Section 9a-104, 9a-105, 9a-106 or 9a-107 of Chapter 9a of the Code, as applicable.

1.10E. Preservation of Trustor’s Existence. Trustor shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation and of the State, and shall comply with all applicable Legal Requirements. Unless Trustor has provided Beneficiary with at least thirty (30) days’ prior written notice thereof, Trustor shall not change its place of business (or if Trustor has more than one place of business, its chief executive office), mailing address or organizational identification number if it has one.

1.10F. Further Indemnities. In addition to any other indemnities contained in the Loan Instruments, Trustor hereby agrees to indemnify and hold Beneficiary harmless from and against all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including architects’, engineers’ and attorneys’ fees and disbursements which may be imposed upon, incurred or asserted against Beneficiary by reason of: (1) the construction of the Improvements, (2) any capital improvements, other work or things, done in, on, under or about the Secured Property or any part thereof, (3) any use, nonuse, misuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Secured Property or any part thereof or any street, drive, sidewalk, curb, passageway or space adjacent thereto, (4) any negligence or willful act or omission on the part of Trustor, any Lessee or any agent, contractor, servant, employee, licensee or invitee of any Lessee or of Trustor, (5) any accident, injury (including death) or damage to any person or property occurring in, on, under or about the Secured Property or any part thereof or in, on, under or about any street, drive, sidewalk, curb, passageway or space adjacent thereto, (6) any default under any Loan Instrument or any Event of Default, (7) any lien or claim arising or alleged to have arisen on or against the

Secured Property or any part thereof under any Legal Requirement or any liability asserted against Beneficiary with respect thereto, (8) any tax attributable to the execution, delivery, filing or recording of any Loan Instrument, (9) any contest permitted pursuant to the provisions of this Deed of Trust, or (10) the enforcement or attempted enforcement of this indemnity.

1.10G. Absence of Insurance. The obligations of Trustor under this Deed of Trust and the other Loan Instruments shall not in any way be affected by (1) the absence, in any case, of adequate insurance, (2) the amount of the insurance or (3) the failure or refusal of any insurer to perform any obligation required to be performed by it pursuant to any insurance policy affecting the Secured Property. If any claim, action or proceeding is made or brought against Beneficiary by reason of any event as to which Trustor is obligated to indemnify Beneficiary, then, upon demand by Beneficiary, Trustor, at Trustor's sole cost and expense, shall resist or defend such claim, action or proceeding in Beneficiary's name, if necessary, by such attorneys as Beneficiary shall approve. Notwithstanding the foregoing, Beneficiary may engage its own attorneys, in its discretion, to defend it or to assist in its defense, and Trustor shall pay the fees and disbursements of such attorneys and, until so paid, such amounts shall bear interest at the Increased Rate and shall be secured by this Deed of Trust.

1.10H. Lost Note. Upon Beneficiary furnishing to Trustor an affidavit stating that the Note has been mutilated, destroyed, lost or stolen, Trustor shall deliver to Beneficiary, in substitution therefor, a new note containing the same terms and conditions as the Note, with a notation thereon of the unpaid principal balance and accrued and unpaid interest thereon. Upon execution and delivery of the replacement note, all references in any of the Loan Instruments to the "Note" shall mean the replacement note.

1.11 Prohibition on Transfers, Liens or Further Encumbrances.

1.11A. Continuing Ownership and Management. Trustor acknowledges that the continuous ownership of the Secured Property and its continuous management and operational control by Trustor are material to the making of the Loan.

1.11B. Prohibition on Transfers, Liens or Further Encumbrances. Except with the prior written consent of Beneficiary, neither Trustor, nor any other Person, may transfer, convey, assign, sell, alienate, mortgage, encumber, pledge, hypothecate, grant a security interest in, or otherwise dispose of (in each instance whether voluntarily or involuntarily, by operation of law or otherwise, directly or indirectly, and, in each case, also prohibiting the granting of an option or the execution of an agreement relating to any of the foregoing):

- (1) all or any part of the Secured Property and/or the Rents, or any interest therein;
- (2) any legal or beneficial ownership interest in Trustor or in any of Trustor's constituent entities, whether direct or indirect, and on all levels, whether made directly or through an intermediary, and whether made in one transaction or effected in more than one transaction; or
- (3) the management and operation by Trustor of the Secured Property.

Without limiting the generality of the foregoing, for purposes of this Section 1.11, a transfer or disposition of the Secured Property (or the Rents, as applicable) or any part thereof or interest therein shall include (a) the change of Trustor's type of organization, jurisdiction of organization or other legal structure, (b) the transfer of the Secured Property or any part thereof or interest therein to a cooperative corporation or association, (c) the conversion of all or any part of the Secured Property or interest therein to a condominium form of ownership, (d) any lease for space in any Improvements for purposes other than occupancy by the tenant, (e) any lease for space in the Improvements containing an option to purchase, (f) any conditional sale or any title retention agreement with regard to, all or any part of the Secured Property or the Rents, (g) unless Trustor has provided Beneficiary with at least thirty (30) days prior written notice thereof, any change of Trustor's name or any change of Trustor's organizational identification number if it has one, and (h) any division of a limited liability company into multiple entities or series pursuant to Section 18-217 of the Delaware LLC Act with an allocation of Secured Property to any such entity. Any action or event described in this Section 1.11B is herein called a "Transfer" and all Transfers are prohibited without the prior written consent of Beneficiary.

1.11C. Acceleration of Obligations. In the event of a Transfer without the prior written consent of Beneficiary, Beneficiary may, without limiting any other right or remedy available to Beneficiary at law, in equity or by agreement with Trustor, and in Beneficiary's discretion, and without regard to the adequacy of its security, accelerate the maturity of the Note and require the payment of all then existing Obligations, including the Make-Whole Amount provided in Section 4.07. The giving of consent by Beneficiary to a Transfer in any one or more instances shall not limit or waive the need for such consent in any other or subsequent instances.

1.12 Expenses. Promptly after Beneficiary's demand therefor, Trustor shall pay Beneficiary for all costs and expenses, including actual out-of-pocket attorneys' fees and expenses and costs of obtaining evidence of title, incurred by Beneficiary in connection with any action, suit, legal proceeding, claim or dispute (a) arising under or in connection with the performance of any rights or obligations under any Loan Instrument or affecting the Obligations or the Secured Property, (b) involving any insurance proceeds or condemnation awards with respect to the Secured Property, (c) to protect the security hereof, (d) as to any concern of Beneficiary with the condition of the Secured Property, or (e) of any other kind or nature in which Beneficiary is made a party relating to the Secured Property or the Loan, or appears as a party, including those related to the estate of an insolvent or decedent or any bankruptcy, receivership, or other insolvency under any chapter of the Bankruptcy Code (Title 11 of the United States Code), as amended, or any other insolvency proceeding or any exercise of the power of sale or judicial foreclosure as set forth in this Deed of Trust. If the Obligations are referred to attorneys for collection, foreclosure or any cause set forth in Article 3, Trustor shall pay all costs and expenses incurred by Beneficiary, including attorneys' fees and expenses, all costs of collection, litigation costs and costs (which may be estimated as to items to be expended after completion of any foreclosure or other action) of procuring title insurance policies, whether or not obtained, Torrens certificates and similar assurances with respect to title and value as Beneficiary may deem necessary together with all statutory costs, with or without the institution of an action or proceeding. All costs and expenses described in this Section 1.12, with interest thereon at the Increased Rate from the date paid by Beneficiary to the date paid by Trustor, shall be paid by Trustor on demand, and shall be secured by this Deed of Trust.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

Trustor represents and warrants:

2.01 Warranty of Title. Trustor (a) lawfully owns and holds title to the Secured Property (other than the Personal Property), in fee simple, subject to no mortgage, lien, charge or other encumbrance, except as specifically set forth in the title insurance policy issued to Beneficiary upon recordation of this Deed of Trust, (b) has full power and lawful authority to grant, bargain, sell, convey, assign, release, pledge, set over, transfer and mortgage the Secured Property as set forth herein, (c) lawfully owns and holds title to the Personal Property subject to no mortgage, lien, charge or other encumbrance, and (d) does warrant and will defend the title to the Secured Property against all claims and demands whatsoever.

2.02 Ownership of Additional or Replacement Improvements and Personal Property. All Improvements and Personal Property hereafter affixed, placed or used by Trustor on the Secured Property shall be owned by Trustor free from all mortgages, liens, charges or other encumbrances.

2.03 No Pending Material Litigation or Proceeding; No Hazardous Materials.

2.03A. Proceedings Affecting Trustor. There are no actions, suits, investigations or proceedings of any kind pending or, to the best knowledge and belief of Trustor, threatened, against or affecting Trustor, or any Guarantor, or against any shareholder, general partner or member of Trustor or any Guarantor, or the business, operations, properties or assets of Trustor or any shareholder, general partner or member of Trustor or any Guarantor, or before or by any Governmental Agency, which may result in any material adverse change in the business, operations, properties or assets or in the condition, financial or otherwise, of Trustor or any Guarantor or any general partner or member of Trustor or any Guarantor, or in the ability of Trustor to pay or otherwise perform the Obligations. To the best knowledge and belief of Trustor, no default exists with respect to any judgment, order, writ, injunction, decree, demand, rule or regulation of any Governmental Agency, which might materially and adversely affect the business, operations, properties or assets or the condition, financial or otherwise, of Trustor or any Guarantor or any general partner or member of Trustor or the ability of Trustor to pay or otherwise perform the Obligations.

2.03B. Proceedings Affecting Secured Property. There are no actions, suits, investigations or proceedings of any kind pending, or, to the best knowledge and belief of Trustor, threatened, against or affecting the Secured Property (including any attempt or threat by any Governmental Agency to condemn or rezone all or any portion of the Secured Property), or involving the validity, enforceability or priority of the Loan Instruments or enjoining or preventing or threatening to enjoin or prevent the use and occupancy of the Secured Property or the performance by Trustor of the Obligations, and there are no rent controls, governmental moratoria or environmental controls (other than those generally imposed by federal or state law) presently in existence or, to the best knowledge and belief of Trustor, threatened, affecting the Secured Property.

2.03C. No Hazardous Materials. Neither Trustor nor, to the best knowledge and belief of Trustor, any other Person has ever:

(1) caused or knowingly permitted any Hazardous Material to be placed, held, located or disposed of, in, on, under or about the Secured Property or any part thereof, or caused or knowingly permitted, in violation of any Legal Requirement, any Hazardous Material to be placed, held, located or disposed of, in, on, under or about any other real property legally or beneficially owned (or any interest or estate which is so owned) by Trustor in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance (the effect of which superlien law or ordinance would be to permit the creation of a lien on the Secured Property to secure any obligation), and neither the Secured Property, nor any part thereof, nor any other real property legally or beneficially owned (or any interest or estate therein which is so owned) by Trustor in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, has ever been used (whether by Trustor or, to the best knowledge or belief of Trustor, by any other Person) as a dump site, storage (whether permanent or temporary) site or transfer site for any Hazardous Material; or

(2) caused or knowingly permitted any asbestos or underground fuel storage facility to be located in, on, under or about the Secured Property; or

(3) discovered any occurrence or condition on any real property adjoining or in the vicinity of the Secured Property that could cause the Secured Property or any part thereof to be subject to any remediation requirements or any restrictions on the ownership, occupancy, transferability or use of the Secured Property under any Environmental Requirement.

2.03D. No Litigation Regarding Hazardous Material. No Person has brought, settled or, to the best knowledge and belief of Trustor, threatened any litigation or administrative action or proceeding alleging the presence, Release or threatened Release of any Hazardous Material in, on, under or about the Secured Property.

2.04 Valid Organization, Good Standing and Qualification of Trustor; Other Organizational Information. Trustor is a duly and validly organized and existing limited liability company in good standing under the laws of the jurisdiction of its organization, and is duly licensed or qualified and in good standing in all other jurisdictions where its ownership or leasing of property or the nature of the business transacted by it makes such qualification necessary, and is entitled to own its properties and assets and to carry on its business, all as, and in the places where, such properties and assets are now owned or operated or such business is now conducted. Trustor has paid all franchise and similar taxes in the jurisdiction in which the Secured Property is located and in all of the jurisdictions in which it is so qualified, insofar as such taxes are due and payable at the date of this Deed of Trust. Trustor's exact legal name is that indicated on the signature page hereof. Trustor is an organization of the type, and is organized in the jurisdiction, as set forth in the first paragraph of this Deed of Trust. Trustor's organizational identification number is 8828744-0160. Section 5.07 accurately sets forth Trustor's place of business or, if Trustor has more than one place of business, its chief executive office as well as Trustor's mailing address if different.

2.05 Authorization; No Legal Restrictions on Performance. The execution and delivery by Trustor of the Loan Instruments and its compliance with the terms and conditions of the Loan Instruments have been duly and validly authorized by all necessary corporate, partnership, membership or other applicable action by Trustor and its constituent entities and the Loan Instruments are valid and enforceable obligations of Trustor in accordance with the terms thereof. Neither the execution and delivery by Trustor of the Loan Instruments, nor the consummation of the transactions contemplated by the Loan Instruments, nor compliance with the terms and conditions thereof will (A) conflict with or result in a breach of, or constitute a default under, any of the terms, obligations, covenants or conditions or provisions of (1) any corporate charter or bylaws, partnership agreement, limited liability company operating agreement, or other organizational or qualification document, restriction, indenture, mortgage, deed of trust, pledge, bank loan or credit agreement, or any other agreement or instrument to which Trustor is now a party or by which Trustor or its properties may be bound or affected, or (2) to the best knowledge and belief of Trustor, any judgment, order, writ, injunction, decree or demand of any Governmental Agency, or (B) result in (1) the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property or asset of Trustor pursuant to the terms or provisions of any of the foregoing or (2) the violation of any Legal Requirement applicable to Trustor or any Guarantor. Trustor is not in default in the performance, observance or fulfillment of any of the terms, obligations, covenants or conditions contained in any indenture or other agreement creating, evidencing or securing the Obligations or pursuant to which Trustor is a party or by which Trustor or its properties may be bound or affected. In addition, (a) the Obligations incurred by Trustor and the granting of this Deed of Trust and of the security interest, rights, and/or lien in and to the Secured Property in connection with the Loan are not made or incurred with the intent to hinder, delay, or defraud any present or future creditor of Trustor; (b) Trustor has not received less than reasonably equivalent value in exchange for incurring the Obligations and/or the granting of this Deed of Trust and of the security interest, rights, and/or lien in and to the Secured Property in connection with the Loan; (c) Trustor is solvent as of the date hereof, and Trustor will not become insolvent as a result of incurring the Obligations and/or the granting of this Deed of Trust and of the security interest, rights, and/or lien in and to the Secured Property in connection with the Loan; (d) Trustor is not engaged, and Trustor is not about to engage, in business or a transaction for which any property remaining with Trustor is an unreasonably small capital; (e) Trustor has not and does not intend to incur, and Trustor does not believe that it will incur, debts that would be beyond Trustor's ability to pay as such debts mature; and (f) Trustor is not granting this Deed of Trust and the security interest, rights, and/or lien in and to the Secured Property and/or incurring the Obligations to or for the benefit of an insider (as defined in 11 U.S.C. § 101(31)), under an employment contract and other than in the ordinary course of business.

2.06 Compliance With Laws. Trustor has, to the best knowledge and belief of Trustor, complied with all applicable Legal Requirements with respect to the conduct of its business and ownership of its properties. No governmental orders, permissions, consents, approvals or authorizations are required to be obtained, and no registrations or declarations are required to be filed in connection with the execution, delivery or performance by Trustor of its obligations under the Loan Instruments.

2.07 Tax Status. Trustor has filed all United States income tax returns and all state and municipal tax returns which are required to be filed, and has paid, or made provision for the

payment of, all taxes which have become due pursuant to such returns or pursuant to any assessment received by Trustor. The United States income tax liability of Trustor has been finally determined by the Internal Revenue Service and satisfied for all taxable years up to and including the taxable year ending 2018.

2.08 Absence of Foreign or Enemy Status; Absence of Blocked Persons; Foreign Corrupt Practices Act. Neither the Loan, nor Trustor's use of the proceeds thereof, will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto. Trustor is and shall remain in compliance with the requirements of (a) all applicable anti-money laundering laws and regulations, including without limitation, the USA Patriot Act of 2001, as amended ("AML"), and (b) Executive Order 13224 of September 23, 2001 "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (66 Fed. Reg. 49079 (2001)) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and in any enabling legislation or other executive orders or regulations in respect thereof (the Order and such other rules regulations, legislation or orders are referred to hereinafter, collectively, as the "Orders"). Without limiting the generality of the foregoing, neither Trustor, nor any subsidiary or affiliate of Trustor, nor any member, partner or shareholder or other beneficial owner of Trustor or of any such subsidiary, affiliate, member, partner, shareholder or other beneficial owner (A) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders, (B) is the subject of any sanctions administered or enforced by OFAC or the U.S. Department of State, the United Nations Security Council, the European Union, or Her Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions") or is located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions, (C) is or will become a "blocked person" described in Section 1 of the Order or (D) knowingly engages or will engage in any dealings or transactions, or is or will be otherwise associated, with any such blocked person. No part of the proceeds of the Loan will be used, directly or indirectly, or loaned, contributed, or otherwise be made available to any Person (I) to fund or facilitate any activities of or business or transaction with any blocked person or any activities or business in any sanctioned country, or in any other manner that would result in a violation of any Sanctions, or (II) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the Foreign Corrupt Practices Act of 1977, as amended. Trustor shall promptly notify Beneficiary should Trustor become aware of any information which would render untrue any of the representations, warranties or covenants set forth in this Section 2.08.

2.09 Federal Reserve Board Regulations. No part of the proceeds of the Loan will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve Trustor in a violation of Regulation X of said Board (12 CFR 224) or

to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute any of the value of the consolidated assets of Trustor and its subsidiaries, if any, and Trustor does not have any present intention that margin stock will constitute any of the value of such assets. As used in this Section, the terms “margin stock” and “purpose of buying or carrying” shall have the meanings assigned to them in said Regulation U.

2.10 Investment Company Act and Public Utility Holding Company Act. Neither Trustor, nor any subsidiary of Trustor, if any, is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 1935, as amended, the Interstate Commerce Act, as amended, or the Federal Power Act as amended.

2.11 ERISA.

2.11A. Neither Trustor nor any entity that holds a direct or indirect interest in Trustor (a “Constituent Entity”) is or shall be (i) an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) regardless of whether such plan is actually subject to ERISA, (ii) a plan to which Internal Revenue Code Section 4975 applies, or (iii) an entity the underlying assets of which include ERISA “plan assets” by reason of a plan’s investment in the entity (e.g., insurance company general or separate account; bank commingled fund).

2.11B. Transactions by or with Trustor and/or Guarantor are not and will not be subject to any Legal Requirements regulating investments of and fiduciary obligations with respect to an employee benefit plan (within the meaning of Section 3(3) of ERISA), regardless of whether such plan is actually subject to ERISA.

2.11C. Any liability or obligation that Trustor (or any person or entity that holds a direct or indirect interest in Trustor, or any other affiliate of Trustor, with which Trustor may share such liability) may have in respect of an employee benefit plan as defined in Section 3(3) of ERISA regardless of whether such plan is actually subject to ERISA has been and shall continue to be satisfied in full.

ARTICLE 3
DEFAULTS

3.01 Events of Default. The existence of any of the following circumstances shall be deemed an “Event of Default” pursuant to this Deed of Trust, without cure or grace period unless expressly provided herein:

3.01A. if Trustor fails to pay any portion of the Obligations as and when the same shall become due and payable as provided in the Loan Instruments; or

3.01B. if Trustor fails to perform or observe any other term, provision, covenant or agreement in the Loan Instruments other than as described in the other clauses of this Section 3.01 and such failure continues for thirty (30) days following written notice from Beneficiary; or

3.01C. if any representation, warranty, certification, financial statement or other information made or furnished at any time pursuant to the terms of the Loan Instruments or

otherwise, by or on behalf of Trustor, any Guarantor or any other Person liable for the Obligations, shall prove to be materially false; or

3.01D. if Trustor shall:

(1) apply for, consent to or acquiesce in the appointment of a receiver, trustee or liquidator of Trustor or of all or any part of Trustor's assets or the Secured Property or any interest in any part thereof (the term "acquiesce" includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within ten (10) days after the appointment); or

(2) commence a voluntary case or other proceeding in bankruptcy, or admit in writing its inability to pay its debts as they come due; or

(3) make a general assignment for the benefit of creditors; or

(4) file a petition or an answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future bankruptcy code or any other statute or law relating to bankruptcy, insolvency or other relief for debtors; or

(5) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency case or proceeding; or

3.01E. if a court of competent jurisdiction enters an order for relief against Trustor under any present or future bankruptcy code or any other statute or law relating to bankruptcy, insolvency or other relief for debtors, which order shall continue unstayed and in effect for any period of forty-five (45) consecutive days; or

3.01F. if a court of competent jurisdiction enters an order, judgment or decree adjudicating Trustor insolvent, approving a petition seeking reorganization or arrangement of Trustor or appointing a receiver, custodian, trustee or liquidator of Trustor or of all or any part of Trustor's assets or the Secured Property or any interest in any part thereof, and such order, judgment or decree shall continue unstayed and in effect for any period of forty-five (45) consecutive days; or

3.01G. if Trustor assigns or purports to assign the whole or any part of the Rents arising from the Secured Property or any part thereof without the prior written consent of Beneficiary; or

3.01H. if a Transfer shall occur without the prior written consent of Beneficiary;
or

3.01I. if Trustor shall be in default beyond any applicable grace period pursuant to any other mortgage, security instrument or other agreement affecting Trustor or any substantial part of its assets or all or any part of the Secured Property; or

3.01J. if any mechanic's, laborer's or materialman's lien, federal tax lien, broker's lien or other lien affecting the Secured Property or any part thereof is not discharged, by payment, bonding, order of a court of competent jurisdiction or otherwise, within twenty (20) days after Trustor receives notice thereof from the lienor or from Beneficiary; or

3.01K. if any of the events described in Section 3.01(D), Section 3.01(E) and/or Section 3.01(F) shall occur in respect of any Guarantor; or

3.01L. if a default by any Guarantor or other Person (other than Beneficiary) shall occur under any guaranty, indemnity agreement, or other instrument which it has executed in connection with the Loan; or

3.01M. if any Guarantor shall contest, repudiate or purport to revoke any guaranty, indemnity agreement or other instrument which it has executed in connection with the Loan for any reason or if any such guaranty, indemnity or other instrument shall cease to be in full force and effect as to the Guarantor or shall be judicially declared null and void as to the Guarantor, or if any Guarantor shall be liquidated, dissolved or wound-up.

3.01N. if any Event of Default shall occur under any of the Existing Loan Instruments.

3.01O. if Trustor consummates a transaction which would cause the Loan Instruments, including this Deed of Trust or the Note, or Beneficiary's exercise of its rights under any Loan Instrument to constitute a nonexempt prohibited transaction under ERISA or result in a violation of a state statute regulating governmental plans, subjecting Beneficiary to liability for a violation of ERISA, the Internal Revenue Code, a state statute, or other similar law.

ARTICLE 4 REMEDIES

4.01 Acceleration, Foreclosure, etc. Upon the happening of any Event of Default, Beneficiary may, at its sole option, declare the entire unpaid balance of the Obligations, including the Make-Whole Amount and any other prepayment charges, if any, due pursuant to any Loan Instrument, immediately due and payable without notice or demand, provided, however, simultaneously with the occurrence of an Event of Default under Section 3.01(D), 3.01(E) or 3.01(F), and without the necessity of any notice or other action by Beneficiary, all Obligations shall automatically become and be due and payable, without notice or demand. In addition, upon the happening of any Event of Default, Beneficiary may, at its sole option, without further delay undertake (to the maximum extent permitted by applicable law) any one or more of the following or exercise any other remedies available to it under applicable law or equity either directly or through Trustee (as applicable):

4.01A. Foreclosure. Institute an action to foreclose this Deed of Trust, or cause the Secured Property or any part thereof to be sold under the power of sale herein granted in any manner permitted by applicable law. To the maximum extent permitted by applicable law, in connection with any sale or sales hereunder, Beneficiary may elect to treat any of the Secured Property which consists of a right in action or which is property that can be severed from the real property covered hereby or any improvements thereon without causing structural damage thereto

as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of real property. Any sale of any personal property hereunder shall be conducted in any manner permitted by Chapter 9a-604 of the Code or any other applicable section of the Code. Where the Secured Property consists of real and personal property or fixtures, whether or not such personal property is located on or within the real property, Beneficiary may elect in its discretion to exercise its rights and remedies against any or all of the real property, personal property, and fixtures in such order and manner as is now or hereafter permitted by applicable law. Without limiting the generality of the foregoing, Beneficiary may, in its discretion and without regard to the adequacy of its security, elect to proceed against any or all of the real property, personal property and fixtures in any manner permitted under Chapter 9a-604(1)(a) and (2) of the Code; and if Beneficiary elects to proceed in the manner permitted under Chapter 9a-604 (1)(b) of the Code (with respect to personal property) and Chapter 9a-604(2)(b) of the Code (with respect to fixtures), the power of sale herein granted shall be exercisable with respect to all or any of the real property, personal property and fixtures covered hereby, as designated by Beneficiary, and Trustee is hereby authorized and empowered to conduct any such sale of any real property, personal property and fixtures in accordance with the procedures applicable to real property. Any sums paid to Beneficiary in effecting any reinstatement pursuant to Utah Code Ann. Section 57-1-31(1) shall be applied to the secured obligation and, to the maximum extent permitted by Utah Code Ann. Section 57-1-31, to Beneficiary's and Trustee's reasonable costs and expenses. Should Beneficiary elect to sell any portion of the Secured Property which is real property or which is personal property or fixtures that Beneficiary has elected under Code Section 9a-604(1)(b) to sell together with real property in accordance with the laws governing a sale of real property, Trustee shall give such notice of default and election to sell as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Trustor, Trustee, at the time and place specified in the notice of sale, shall sell such real property at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone any sale hereunder by public announcement thereof at the time and place noticed therefor in accordance with Utah Code Ann. Section 57-1-27(2). If the Secured Property consists of several lots, parcels or items of property, Beneficiary may: designate the order in which such lots, parcels or items shall be offered for sale or sold, subject to Trustor's right under Utah Code Annotated Section 57-1-27 to direct the order in which the trust property shall be sold, if the property consists of several known lots or parcels which can be sold separately. Any person, including Trustor, Trustee or Beneficiary, may purchase at any sale hereunder, and Beneficiary shall have the right to purchase at any sale hereunder by crediting upon the bid price the amount of all or any part of the indebtedness hereby secured to the extent permitted by Utah Code Ann. Section 57-1-28(1)(b). Upon any sale hereunder, Trustee shall execute and submit to the Salt Lake County Recorder's Office for recording a trustee's deed conveying the property so sold conveying the property so sold in accordance with Utah Code Ann. Section 57-1-28(2). In connection with any foreclosure sale hereunder, Beneficiary may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in its sole discretion, and in either case Beneficiary may, to the maximum extent permitted pursuant to Utah Code Ann. Section 57-1-28, include all such amounts in any credit which Beneficiary may make against its bid at a foreclosure sale of the trust estate pursuant to this Deed of Trust.

4.01B. Judicial Action. Bring an action in any court of competent jurisdiction to foreclose this Deed of Trust or to enforce any of the covenants and agreements contained therein, including, but not limited to, as permitted pursuant to Utah Code Ann. Section 57-1-23.

4.01C. Entry. Beneficiary personally, or by its agents or attorneys, may enter all or any part of the Secured Property, and may exclude Trustor, its agents and servants wholly therefrom without liability for trespass, damages or otherwise. Trustor shall surrender possession of the Secured Property to Beneficiary on demand after the happening of any Event of Default. Thereafter, Beneficiary may use, operate, manage and control the Secured Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers. Upon each such entry, Beneficiary, at the expense of Trustor from time to time, either by purchase, repairs or construction, may maintain and restore the Secured Property, may complete the construction of the Improvements and in the course of such completion may make such changes in the contemplated or completed Improvements as Beneficiary may deem desirable and may insure the same. At the expense of Trustor, Beneficiary may make, from time to time, all necessary or desirable repairs, renewals and replacements and such alterations, additions, betterments and improvements thereto and thereon as Beneficiary may deem advisable. In each of the circumstances described in this Section 4.01C, Beneficiary shall have the right to manage and operate the Secured Property and to carry on the business thereof and exercise all rights and powers of Trustor with respect thereto, either in the name of Trustor or otherwise as Beneficiary shall deem best.

4.01D. Collection of Rents, etc. Beneficiary may, in accordance with applicable law, collect and receive all Rents. Beneficiary may deduct, from the monies so collected and received, all expenses of conducting the business of the Secured Property and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for Impositions, insurance, taxes and assessments, liens or other charges upon the Secured Property or any part thereof, as well as reasonable compensation for the services of Beneficiary and for all attorneys, agents, clerks, servants, and other employees engaged and employed by Beneficiary. After such deductions and the establishment of all reasonable reserves, Beneficiary shall apply all such monies to the payment of the unpaid Obligations. Beneficiary shall account only for Rents actually received by Beneficiary.

4.01E. Receivership. Beneficiary may, in accordance with applicable law, have a receiver appointed to enter into possession of the Secured Property, collect the Rents therefrom and apply the same as the court may approve. Beneficiary may have a receiver appointed, as a matter of right without notice and without the necessity of proving either the inadequacy of the security provided by this Deed of Trust or the insolvency of Trustor or any other Person who may be legally or equitably liable to pay the Obligations. Trustor and each such Person, presently and prospectively, waive such proof and consent to the appointment of such receiver. If Beneficiary or any receiver collects the Rents, the monies so collected shall not be substituted for payment of the Obligations, nor can they be used to cure an Event of Default, without the prior written consent of Beneficiary. Beneficiary shall not be liable to account for Rents not actually received by Beneficiary.

4.01F. Specific Performance. Beneficiary may institute an action for specific performance of any covenant contained herein or in aid of the execution of any power herein granted.

4.01G. Recovery of Sums Required to be Paid. Beneficiary may, subject to applicable law, including but not limited to Utah Code Ann. Sections 78B-6-901 and 57-1-32, from time to time, take action to recover any sum or sums which constitute a part of the Obligations as such sums shall become due, without regard to whether or not the remainder of the Obligations shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure or any other action for each Event of Default existing from time to time.

4.01H. Other Remedies. Exercise any and all other rights or remedies with respect to the Secured Property or Trustor as may then be available under applicable law, including, but not limited to, the exercise of any and all rights and remedies in the manner and according to the procedures permitted under applicable law with respect to any personal property and/or real property covered by this Deed of Trust, including, but not limited to, the provisions of Section 9a-604 of the Code, as amended, without prejudice, however, to the effectiveness of any other provisions of this Deed of Trust which may apply notwithstanding or in addition to the provisions of Section 9a-604 of the Code.

4.02 No Election of Remedies. Beneficiary may, in its discretion, exercise all or any of the rights and remedies provided herein or in the other Loan Instruments, or which may be provided by statute, law, equity or otherwise, in such order and manner and from time to time, as Beneficiary shall elect without impairing Beneficiary's rights hereunder or its rights pursuant to any of the Loan Instruments and without affecting the liability of any Person for the Obligations.

4.03 Beneficiary's Right to Release, etc. Beneficiary may, in its discretion and in accordance with applicable law, from time to time, release (for such consideration as Beneficiary may require) any part of the Secured Property (A) without notice to, or the consent, approval or agreement of any other party in interest, (B) without, as to the remainder of the Secured Property, in any way impairing or affecting the validity or the lien of this Deed of Trust or any of the other Loan Instruments, or the priority thereof and (C) without releasing Trustor from any liability for any of the Obligations. Beneficiary may accept, by assignment, pledge or otherwise, any other property in place of any part of the Secured Property as Beneficiary may require without being accountable for so doing to any other lienor or other Person. To the extent permitted by law, neither Trustor, nor the holder of any lien or encumbrance affecting the Secured Property or any part thereof shall have the right to require Beneficiary to marshal assets.

4.04 Proceeds of Sale. The proceeds of any sale made under or by virtue of Section 4.01 together with all other sums which then may be held by Trustee or Beneficiary under this Deed of Trust, whether under the provisions of Section 4.01 or otherwise, shall be applied as follows to the extent permitted by applicable law, including, but not limited to, Utah Code Ann. Section 57-1-29:

4.04A. FIRST: To the payment of the costs and expenses of sale and of any judicial proceedings wherein the same may be made, including compensation to Trustee and Beneficiary, their agents and counsel, and to the payment of all expenses, liabilities and advances

made or incurred by Trustee under this Deed of Trust, together with interest on all advances made by Trustee at the Increased Rate or, if the maximum rate permitted by law to be charged by Trustee is less than the Increased Rate, at such maximum rate.

4.04B. SECOND: To the payment of any and all sums expended by Beneficiary under the terms hereof not then repaid, with accrued interest at the Increased Rate and all other sums (except advances of principal and interest thereon) required to be paid by Trustor pursuant to any provisions of this Deed of Trust, or the Note, or any note evidencing any future advance, or any of the other Loan Instruments including, without limitation, all expenses, liabilities and advances made or incurred by Beneficiary under this Deed of Trust or in connection with the enforcement hereof, together with interest thereon as herein provided.

4.04C. THIRD: To the payment of unpaid balance of the Obligations, including, the Make-Whole Amount and any other prepayment charges, if any, due pursuant to any Loan Instrument, with interest on the unpaid principal thereof at the rate set forth therein from the date of advancement thereof until the same is paid in full and, in the event any such proceeds shall be insufficient to pay the entire amount so due, then first to the payment of interest and then to the payment of principal.

4.04D. FOURTH: The remainder, if any, to the person or persons legally entitled thereto.

4.05 Beneficiary's Right to Remedy Defaults, etc. If Trustor defaults in the performance of any of the covenants or agreements contained in this Deed of Trust or any of its other obligations under the other Loan Instruments, or if any action or proceeding is commenced which affects Beneficiary's interest in the Secured Property or any part thereof, including, but not limited to, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, then Beneficiary may, but without obligation to do so and without releasing Trustor from any obligation hereunder, cure such defaults, make such appearances, disburse such sums and/or take such other action as Beneficiary deems necessary or appropriate to protect Beneficiary's interest, including disbursement of attorneys' fees, entry upon the Secured Property to make repairs, payment of Impositions or insurance premiums or otherwise cure the default in question or protect the security of the Secured Property, and payment, purchase, contest or compromise of any encumbrance, charge or lien encumbering the Secured Property. Trustor further agrees to pay all expenses incurred by Beneficiary (including fees and disbursements of counsel) pursuant to this Section 4.05, including those incident to the curing of any default and/or the protection of the rights of Beneficiary hereunder, and enforcement or collection of payment of the Note or any future advances whether by judicial or nonjudicial proceedings, or in connection with any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding of Trustor, or otherwise. Any amounts disbursed by Beneficiary pursuant to this Section 4.05 shall be additional indebtedness of Trustor secured by this Deed of Trust as of the date of disbursement and shall bear interest at the Increased Rate from such date until paid by Trustor in full. All such amounts shall be payable by Trustor immediately without demand. Nothing contained in this Section 4.05 shall be construed to require Beneficiary to incur any expense, make any appearance, or take any other action and any action taken by Beneficiary pursuant to this Section

4.05 shall be without prejudice to any other rights or remedies available to Beneficiary pursuant to any Loan Instrument or at law or in equity.

4.06 Waivers. Trustor waives and releases (A) all benefits that might accrue to Trustor by virtue of any present or future laws exempting the Secured Property, or any part of the proceeds arising from any sale of the Secured Property, from attachment, levy or sale under execution, or providing for any stay of execution, exemption from civil process or extension of time; (B) all benefits that might accrue to Trustor from requiring valuation or appraisal of any part of the Secured Property levied or sold on execution of any judgment recovered for the Obligations; (C) all notices not herein or in any other Loan Instrument specifically required as a result of Trustor's default or of Beneficiary's exercise, or election to exercise, any option pursuant to any of the Loan Instruments; and (D) all rights of redemption to the extent that Trustor may lawfully waive same. At no time will Trustor insist upon, plead or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law or any exemption from execution or sale of the Secured Property or any part thereof, whenever enacted, now or at any time hereafter in force, which may affect the covenants or terms of performance of the Loan Instruments. Similarly, Trustor will not claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Secured Property or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction. After any such sale or sales, to the extent permitted by law, Trustor shall not claim or exercise any right under any law or laws heretofore or hereafter enacted to redeem the property so sold or any part thereof. Trustor waives all benefits or advantages of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Beneficiary. Trustor shall suffer and permit the execution of every such power as though no such law or laws had been made or enacted. To the extent permitted by law, the Secured Property may be sold in one parcel, as an entirety, or in such parcels, manner or order as Beneficiary in its discretion may decide. To the extent permitted by law, neither Trustor nor the holder of any lien or encumbrance affecting the Secured Property or any part thereof may require Beneficiary to marshal assets.

4.07 Prepayment. Trustor shall pay the charge provided in the Note for prepayment of the Obligations if for any reason (including the acceleration of the due date of the Obligations by Beneficiary following the occurrence of an Event of Default) any of such Obligations shall be due and payable or paid prior to the stated maturity date thereof, whether or not such payment is made prior to or at any sale held pursuant to or by virtue of this Article 4. Beneficiary has relied on Trustor's creditworthiness and its agreement to repay the Obligations in strict accordance with the terms set forth in the Loan Instruments, and would not make the Loan without the promises by Trustor to make all payments due pursuant to the Loan Instruments and not to prepay all or any part of the principal balance of the Note prior to the final maturity date thereof, except on the terms expressly set forth herein and in the Note. Therefore, any prepayment of the Note, whether occurring as a voluntary prepayment by Trustor or occurring upon an acceleration of the Note by Beneficiary or otherwise, will prejudice Beneficiary's ability to meet its obligations and to earn the return on the funds advanced to Trustor, which Beneficiary intended and expected to earn when it made the Loan, and will also result in other losses and additional expenses to Beneficiary. In consideration of Beneficiary making the Loan at the interest rate and for the term set forth in the Note, Trustor expressly waives all rights it may have under

applicable law to prepay, without charge or premium, all or any part of the Note, either voluntarily or upon an acceleration of the Note by Beneficiary, including an acceleration upon the making or suffering by Trustor of any transfer or disposition prohibited by Section 1.11. If a prepayment of all or any part of the principal balance of the Note is made by or on behalf of Trustor, for any reason, whether due to the voluntary acceptance by Beneficiary of a prepayment tendered by Trustor, or the acceleration of the Note by Beneficiary, or in connection with any reinstatement of the Loan Instruments pursuant to any foreclosure proceedings, or any right of redemption exercised by Trustor or any other party having the right to redeem or to prevent any foreclosure of this Deed of Trust, or upon the consummation of any foreclosure sale, or under any other circumstances, Trustor or any other Person making any such prepayment shall be obligated to pay, concurrently therewith, the Make-Whole Amount and the payment of the Make-Whole Amount shall be a condition to the making of such prepayment, and the obligation to pay the Make-Whole Amount shall be secured by this Deed of Trust and the other Loan Instruments. Trustor shall pay the Make-Whole Amount without prejudice to the right of Beneficiary to collect any other amounts due pursuant hereto or to declare a default hereunder. Nothing herein shall be construed as permitting any partial prepayment of the Obligations, except with Beneficiary's prior written consent thereto obtained in each instance.

ARTICLE 5 MISCELLANEOUS

5.01 Non-Waiver. The failure of Beneficiary to insist upon strict performance of any term of this Deed of Trust or any other Loan Instrument shall not be deemed to be a waiver of any term of this Deed of Trust or any other Loan Instrument. Trustor shall not be relieved of its obligation to pay and perform the Obligations, at the time and in the manner provided in the Loan Instruments, by reason of (A) a failure by Beneficiary to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any other Loan Instrument (regardless of whether or not Trustor has requested Beneficiary to do so), (B) the release, regardless of consideration, of the whole or any part of the Secured Property or any other security for the Obligations, or (C) any agreement or stipulation between Beneficiary and any subsequent owner or owners of the Secured Property or any other Person extending the time of payment or otherwise modifying or supplementing the terms of this Deed of Trust or any other Loan Instrument, without first having obtained the consent of Trustor. Trustor shall pay and perform the Obligations at the time and in the manner provided in this Deed of Trust and the other Loan Instruments as so extended, modified or supplemented, unless expressly released and discharged by Beneficiary. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Secured Property, Beneficiary may release any Person at any time liable for the payment or performance of the Obligations, or any part thereof, or any part of the security held for the Obligations, and may extend the time of such payment or performance or otherwise modify the terms of any Loan Instrument, including a modification of the interest rate payable on the principal balance of the Note, without (to the extent permitted by applicable law) in any manner impairing or affecting any of the Loan Instruments or the lien thereof or the priority of this Deed of Trust, as so extended and modified, as security for the Obligations over any such subordinate lien, encumbrance, right, title or interest. Beneficiary may, subject to applicable law, including, but not limited to, Utah Code Ann. Sections 78B-6-901 and 57-1-32, resort for the payment and

performance of the Obligations to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to require payment and performance of the Obligations, or any part thereof, or to enforce any term of this Deed of Trust, without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. In addition to the rights and remedies stated in this Deed of Trust, Beneficiary may personally or through Trustee exercise every additional right and remedy now or hereafter afforded by law or in equity. Each right of Beneficiary and Trustee pursuant to this Deed of Trust shall be separate, distinct and cumulative, and no such right shall be given effect to the exclusion of any other. No act of Beneficiary or Trustee shall, to the maximum extent permitted by applicable law, be construed as an election to proceed pursuant to any one provision of this Deed of Trust to the exclusion of any other provision.

5.02 Sole Discretion of Beneficiary. Whenever pursuant to this Deed of Trust or in any other Loan Instrument (A) Beneficiary exercises any right to approve or disapprove or to give or withhold its consent, (B) any arrangement or term is to be satisfactory to Beneficiary, or (C) any other decision or determination is to be made by Beneficiary, Beneficiary may give or withhold such approval or consent, determine whether or not such arrangement or term is satisfactory, and make all other decisions or determinations, in Beneficiary's sole and absolute discretion, and Beneficiary's decision shall be final and conclusive except where this Deed of Trust expressly provides to the contrary. If Trustor shall seek the consent or approval of Beneficiary pursuant to this Deed of Trust and Beneficiary shall fail or refuse to give such consent or approval, Trustor shall not be entitled to any damages for any withholding of such approval or consent by Beneficiary. Trustor's sole remedy shall be an action for injunctive or declaratory relief, which remedy shall be available only in those cases where Beneficiary has expressly agreed not to unreasonably withhold its consent or approval.

5.03 Legal Tender. Trustor shall pay all payments of principal, interest or other amounts required or provided for herein in lawful money of the United States of America at the time of payment, at the above described office of Beneficiary or at such other place as Beneficiary may from time to time designate.

5.04 No Merger or Termination. If both the lessor's and Lessee's estates under any Lease or any portion thereof which constitutes a part of the Secured Property shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by the application of the doctrine of merger and in such event, Beneficiary shall continue to have and enjoy all of its rights and privileges as to the separate estates. In addition, the foreclosure of this Deed of Trust shall not destroy or terminate any Lease or sublease then existing and created by Trustor, whether by application of the law of merger or as a matter of law or otherwise, unless Beneficiary or any purchaser at any sale related to such foreclosure shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any Lease or sublease, unless Beneficiary or such purchaser shall give written notice thereof to the related lessee or sublessee.

5.05 Discontinuance of Actions. If Beneficiary shall enforce any right pursuant to this Deed of Trust by foreclosure, sale, entry or otherwise and discontinue or abandon such enforcement for any reason or any such proceedings shall have been determined adversely, then,

in each such case, Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and the Secured Property shall remain subject to the lien of this Deed of Trust.

5.06 Headings. The headings of the Sections and other subdivisions of this Deed of Trust are for the convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

5.07 Notice to Parties. All notices and demands or other communications hereunder shall be in writing, and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by generally recognized overnight delivery service, with postage prepaid, addressed to Trustor or Beneficiary, as applicable, at the addresses stated below, or at such other address of which either Trustor or Beneficiary may hereafter notify the other in writing:

Trustor:	c/o GMC Properties 4821 Atlantic Blvd. Jacksonville, Florida 32207 Attn: Christopher Simms
with a copy to:	OATES, KNEZEVICH, GARDENSWARTZ, KELLY & MORROW, P.C. 533 E. Hopkins Avenue, Suite 201 Aspen, Colorado 81611 Attn: Leonard Oates, Esq.
Beneficiary:	NEW YORK LIFE INSURANCE COMPANY c/o New York Life Real Estate Investors 51 Madison Avenue New York, New York 10010-1603 Attn: Senior Director – Loan Management Loan No.: 374-1236
with a copy to:	NEW YORK LIFE INSURANCE COMPANY Office of the General Counsel 51 Madison Avenue New York, New York 10010-1603 Attn: Vice President - Real Estate Section - Loan No.: 374-1236
with an email copy to:	<u>REI_Servicing@nylinvestors.com</u>
with a copy to:	SEYFARTH SHAW LLP 601 South Figueroa Street, Suite 3300 Los Angeles, California 90017 Attention: Stacy N. Paek, Esq.

Each notice or demand so given or served shall be deemed given and effective, (A) if personally delivered, on the day of actual delivery or refusal and (B) if sent by generally recognized overnight delivery service, on the next Business Day. Notwithstanding the foregoing, service of any notice of default or notice of sale provided or required by law shall, if mailed as required by law, be deemed given and effective on the date of mailing.

5.08 Successors and Assigns Included In Parties. Subject to the provisions of Section 1.11, each reference herein to Trustor or Beneficiary shall mean and include, the heirs, legal representatives, successors and assigns of such Person. All covenants and agreements contained in this Deed of Trust by or on behalf of Trustor shall bind Trustor's heirs, legal representatives, successors and assigns and shall inure to the benefit of Trustor's permitted successors and assigns, and all covenants and agreements by or on behalf of Beneficiary shall bind and inure to the benefit of Beneficiary's successors and assigns.

5.09 Changes and Modifications. This Deed of Trust may only be changed or modified by an agreement in writing, signed by both Trustor and Beneficiary.

5.10 Applicable Law. This Deed of Trust shall be construed and enforced according to the law of the State, other than such law with respect to conflicts of laws.

5.11 Invalid Provisions to Affect No Others. The unenforceability or invalidity of any provision or provisions of this Deed of Trust as to any Persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other Persons or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

5.12 Usury Savings Clause. Trustor and Beneficiary intend to conform strictly to the usury laws now or hereafter in force in the State and all interest payable pursuant to the Note, this Deed of Trust or any other Loan Instrument, unless exempt from such laws, shall be subject to reduction to the amount equal to the maximum non-usurious amount allowed pursuant to such usury laws as now or hereafter construed by the courts having jurisdiction over such matters. The aggregate of all interest (whether designated as interest, service charges, points or otherwise) contracted for, chargeable or receivable pursuant to the Note, this Deed of Trust or any other Loan Instrument shall under no circumstances exceed the maximum legal interest rate which Beneficiary may charge under applicable law from time to time. Any interest in excess of the maximum amount permitted by law shall be deemed a mistake and shall be canceled automatically and, if theretofore paid, Beneficiary shall, at its option, either rebate such interest to Trustor or credit such interest to the principal amount of the Obligations, or if all such principal has been repaid, Beneficiary shall rebate such excess to Trustor.

5.13 No Statute of Limitations. To the full extent permitted by law, Trustor hereby waives the pleading of any statute of limitations as a defense to any or all of the Obligations.

5.14 Late Charges. If Trustor fails to pay, when due, without regard to any grace period, any installment of interest or principal, any payment due pursuant to Section 1.04 or any deposit or reserve due pursuant to this Deed of Trust or any other Loan Instrument, Trustor shall pay to Beneficiary (unless waived by Beneficiary) the Late Charge as defined and described in the Note. Each such Late Charge, if not previously paid, shall, at the option of Beneficiary, be

added to and become part of the succeeding monthly payment to be made pursuant to the Note, and shall be secured by this Deed of Trust. Any such Late Charge shall be in addition to any fees and charges of any agents or attorneys which Beneficiary is entitled to employ on any default hereunder whether authorized herein or by law. Trustor acknowledges that any default in the payment of any installment of principal or interest due under the Note or any other payment required hereunder will result in loss and additional expenses to Beneficiary in servicing the indebtedness secured hereby, handling such delinquent payments and meeting its other financial obligations, and that the extent of such loss and additional expense is extremely difficult and impractical to ascertain. Accordingly, Trustor acknowledges that such Late Charge is a reasonable estimate of such loss and expenses.

5.15 Waiver of Jury Trial. To the extent permitted by applicable law, Trustor waives any right to trial by jury with respect to any action or proceeding (a) brought by Trustor, Beneficiary or any other Person relating to (i) the Obligations or any understandings or prior dealings between Trustor and Beneficiary or (ii) the Loan Instruments, or (b) to which Beneficiary is a party.

5.16 Continuing Effectiveness. This Deed of Trust shall secure all advances made pursuant to the Loan Instruments, all rearrangements and renewals of the Obligations and all extensions as to the time of payment thereof, whether or not such advances, rearrangements, renewals or extensions are evidenced by new promissory notes or other instruments hereafter executed and irrespective of whether filed or recorded. The execution of this Deed of Trust shall not impair or affect any other security which may be given to secure the payment of the Obligations, and all such additional security shall be considered as cumulative. The taking of additional security, execution from time to time of partial releases as to the Secured Property or any extension of time of payment of the Obligations shall not diminish the force, effect or lien of this Deed of Trust, and shall not affect or impair the liability of any maker, surety or endorser for the payment of the Obligations.

5.17 Time of Essence. Time is of the essence as to Trustor's performance of each provision of this Deed of Trust, the Note and the other Loan Instruments. Trustor agrees that where, by the terms of this Deed of Trust, the Note or any other Loan Instrument, a day is named or a time is fixed for the payment of any sum of money or the performance of any obligation by Trustor, the day and/or time stated enters into the consideration and is of the essence of the whole contract.

5.18 Non-Recourse. This Deed of Trust is, and shall be, subject to, the exculpation provisions of Section 14 of the Note.

5.19 Non-Business Days. If any payment required hereunder or under any other Loan Instrument becomes due on a day that is not a Business Day, then such payment shall be due and payable on the immediately preceding Business Day.

5.20 Single Purpose Entity. Trustor represents, warrants and covenants that at all times since its formation and thereafter:

(A) Each of Trustor and any SPE Principal, does not own and will not own, either directly or indirectly, any asset or property other than (i) with respect to Trustor, the Secured Property and incidental personal property necessary for the ownership or operation of the Secured Property and (ii) with respect any SPE Principal, the general partnership or managing member interest in Trustor, as applicable.

(B) Each of Trustor and any SPE Principal, has not engaged in and will not engage in any business other than (i) with respect to Trustor, the ownership, management and operation of the Secured Property and (ii) with respect to any SPE Principal, the ownership of the general partnership or managing member interest in Trustor, as applicable, and each of Trustor and any SPE Principal, will conduct and operate its business as presently conducted and operated.

(C) Unless Trustor is a corporation or an Acceptable Delaware LLC, has and shall have an SPE Principal as its only general partner or managing member.

(D) Each of Trustor and any SPE Principal has not entered and will not enter into any contract or agreement with any affiliate of Trustor, any constituent party of Trustor or any affiliate of any constituent party, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with unaffiliated third parties.

(E) Each of Trustor and any SPE Principal has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than, with respect to Trustor (i) the Obligations, (ii) the Existing Obligations and (iii) trade and operational debt incurred in the ordinary course of business with trade creditors in amounts as are normal and reasonable under the circumstances provided that such debt is paid within sixty (60) days of the date it is incurred. No indebtedness other than the Obligations and the Existing Obligations may be secured (subordinate or pari passu) by the Secured Property.

(F) Each of Trustor and any SPE Principal has not made and will not make any loans or advances to any third party (including any affiliate, constituent party or any affiliate of any constituent party), and have not and will not acquire obligations or securities of its affiliates or any constituent party.

(G) Each of Trustor and any SPE Principal has been, is and intends to remain solvent and each of Trustor and any SPE Principal has and will pay its own debts and liabilities from its assets (to the extent of such funds and assets), as the same shall become due.

(H) Each of Trustor and any SPE Principal has done or caused to be done and will do or cause to be done all things necessary to observe organizational formalities and preserve its existence, and each of Trustor and any SPE Principal has not and will not, nor has Trustor or any SPE Principal permitted nor will Trustor, nor any SPE Principal, permit any of its constituent parties, to amend, modify or otherwise change the partnership certificate, partnership

agreement, articles of incorporation, bylaws, articles of organization, operating agreement, trust agreement or other organizational document of Trustor or any SPE Principal or such constituent party in a manner which would result in a breach of any of the representations, warranties or covenants set forth in this Section 5.20 or in a manner that would otherwise adversely affect Trustor's and any SPE Principal's single purpose status.

(I) Each of Trustor and any SPE Principal has and will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates, any constituent party and any other Person; provided, however, Trustor or any SPE Principal may include its financial statements as part of a consolidated financial statement if (i) such statements contain a notation that makes clear that Trustor or such SPE Principal is a separate entity and that the assets and credit of Trustor or such SPE Principal are not available to satisfy liabilities of any other Person and that the assets and credit of such other Person are not available to satisfy liabilities of Trustor or such SPE Principal; each of Trustor and such SPE Principal, has and will file its own tax returns as required by applicable state and federal law; each of Trustor and such SPE Principal has maintained and shall maintain its books, records, resolutions and agreements as official records.

(J) Each of Trustor and any SPE Principal has been and will be, and at all times has and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Trustor or such SPE Principal, any constituent party of Trustor or such SPE Principal, or any affiliate of any constituent party), has corrected and will correct any known misunderstanding regarding its status as a separate entity, has conducted and will conduct business in its own name, has not identified and shall not identify itself or any of its affiliates as a division or part of the other and has maintained and shall maintain and utilize separate stationery, invoices and checks.

(K) Other than the Existing Obligations, each of Trustor and any SPE Principal has not assumed or guaranteed and will not assume or guaranty the debts of any other Person, has not held and will not hold itself out to be responsible for the debts of any other Person, and has not and will not otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person.

(L) Each of Trustor and any SPE Principal has maintained and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(M) Neither Trustor nor any SPE Principal, nor any of their respective constituent parties has caused or will cause or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of Trustor or any SPE Principal, or the division of Trustor or SPE Principal into multiple entities or series pursuant to Section 18-217 of the Delaware LLC Act; and neither Trustor nor any SPE Principal, nor any of their respective constituent parties has disposed or will dispose of all or substantially all of the assets of Trustor or any SPE Principal and has not changed and will not change Trustor's or any SPE Principal's legal structure.

(N) Each of Trustor and any SPE Principal has not commingled and will not commingle the funds and other assets of Trustor or any SPE Principal, with those of any affiliate or constituent party or any other Person.

(O) Each of Trustor and any SPE Principal have maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, or any other Person.

(P) Each of Trustor and any SPE Principal does not and will not hold itself out to be responsible for the debts or obligations of any other Person.

(Q) Each of Trustor and any SPE Principal does and shall continue to (i) allocate fairly and reasonably any overhead and expense for office space shared with any affiliated Person, (ii) pay any liabilities, including salaries of its employees, out of its own funds and not from funds of any affiliated Person and/or (iii) maintain a sufficient number of employees (which may be zero) in light of its contemplated business operations.

(R) Each of Trustor and any SPE Principal, shall not violate or cause to be violated the assumptions made with respect to Trustor and any SPE Principal, and their respective direct or indirect constituent entities in any opinion letter pertaining to substantive consolidation delivered to Beneficiary in connection with the Loan, if any.

(S) Within the same time frame set forth in this Deed of Trust or any other applicable Loan Instrument for the delivery of quarterly financial statements, Trustor shall deliver to Beneficiary a certification executed by an officer of Trustor certifying to Beneficiary that, as of such date, Trustor and any SPE Principal, complies with the provisions of Section 5.20 of this Deed of Trust.

(T) Trustor's limited liability company agreement, limited partnership agreement or articles of incorporation, as applicable, shall contain the provisions set forth in Section 5.20(A)-(S) of this Deed of Trust and, unless Trustor is a corporation or an Acceptable Delaware LLC, its sole general partner or managing member, as applicable, shall be an SPE Principal that is a corporation or an Acceptable Delaware LLC with articles of incorporation or a limited liability company agreement, as applicable, that contains the provisions set forth in Section 5.20(A)-(S) of this Deed of Trust. So long as any Obligations are outstanding, none of such instruments shall be amended, altered or changed without the prior written consent of Beneficiary.

(U) In the event that Trustor or any SPE Principal is a corporation or an Acceptable Delaware LLC, it shall at all times cause there to be at least one duly appointed director or manager, as applicable (an "Independent Director") of Trustor or such SPE Principal. The Independent Director shall be satisfactory to Beneficiary, and must be a natural person employed by, or an entity owned and controlled by a nationally recognized corporate service provider and shall not at the time of initial appointment, nor at any time during the preceding five (5) years have been: (1) a stockholder, director, officer, employee, partner, attorney or counsel of Trustor any SPE Principal, or any affiliate of Trustor or any SPE Principal; (2) a customer, supplier or other person who derives more than ten percent (10%) of its purchases or revenues

from its activities with Trustor or any SPE Principal or any affiliate of Trustor or any SPE Principal; (3) a Person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other Person; or (4) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person. As used in this paragraph, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person or entity, whether through ownership of voting securities, by contract or otherwise. The affirmative vote or written consent of the Independent Director shall be required for Trustor and any SPE Principal to approve or take any Material Action. No termination or change of the Independent Director shall be made without giving Beneficiary at least five (5) Business Days prior written notice, which notice shall include a copy of a resume for such proposed replacement Independent Director that reflects that such individual meets the requirements contained herein; provided further, that Beneficiary shall have the right to object to the appointment of said replacement and in the event of such objection, the proposed replacement shall not be admitted. Notwithstanding the foregoing, any current Independent Director that receives notice of the termination of its duties shall provide a copy of said notice to Beneficiary within five (5) days of receipt thereof. To the fullest extent permitted by applicable law, and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of Trustor and any SPE Principal (including their respective creditors) and the members, partners or shareholders of Trustor and any SPE Principal, as applicable ("Constituent Owners"), in acting or otherwise voting on any Material Actions or matters provided for in Trustor's or such SPE Principal's organizational documents (which such fiduciary duties to the Constituent Owners, Trustor and any SPE Principal (including their respective creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in such entity, exclusive of (x) all other interests (including, without limitation, all other interests of the Constituent Owners), (y) the interests of other affiliates of the Constituent Owners or of Trustor or any SPE Principal, as applicable, and (z) the interests of any group of affiliates of which the Constituent Owners or Trustor or any SPE Principal, as applicable, is a part). Regardless of the solvency of Trustor or any SPE Principal, the Independent Director shall owe duties to protect creditors in the enforcement of their contractual rights, including all remedies. Other than as provided above, the Independent Director shall not have any fiduciary duties to any Constituent Owners, any directors or managers of Trustor or any SPE Principal, as applicable, or any other Person, provided, however, that the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law. To the fullest extent permitted by applicable law, an Independent Director shall not be liable to Trustor, any SPE Principal or any Constituent Owner or any other Person for breach of contract or breach of duties (including fiduciary duties), unless such Independent Director acted in bad faith or engaged in willful misconduct. All other matters as to the Independent Director shall be set forth in the organizational documents of Trustor or SPE Principal, as applicable, and shall be satisfactory to Beneficiary.

Beneficiary hereby expressly consents to Trustor guaranteeing and assuming liability for the Existing Obligations of the Existing Borrowers in accordance with the terms and conditions of this Deed of Trust. Notwithstanding anything to the contrary contained herein or in any of the Loan Instruments or Existing Loan Instruments, the execution and delivery by Trustor of this Deed of Trust and the performance of its obligations hereunder shall not constitute a default or an Event of Default hereunder and shall be permitted exceptions to any restrictions contained in

this Section 5.20 prohibiting such actions.

5.21 Number and Gender; Interpretation. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other. Wherever used in this Deed of Trust, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Trustor" shall mean and include both Trustor and any subsequent owner or owners of the Secured Property or any portion thereof, and the word "Beneficiary" shall mean and include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of the Note secured hereby. In this Deed of Trust the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto.

5.22 Request for Notice. Pursuant to Utah Code Ann. Section 57-1-26(3), Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale given pursuant to this Deed of Trust be mailed to Trustor at the address set forth herein above.

5.23 Fixture Filing. Portions of the Secured Property are goods which are or are to become fixtures relating to the Land and/or the Premises, and Trustor covenants and agrees that the filing of this Deed of Trust in the real estate records of the county where the Premises are located shall also operate from the time of filing as a fixture filing in accordance with 9a-502(3) of the Code.

5.24 Delegation to Sub Agents. Wherever a power of attorney is conferred upon Beneficiary hereunder, it is understood and agreed that such power is conferred with full power of substitution, and Beneficiary may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more sub-agents.

5.25 Reconveyance. Upon the payment in full of all sums secured by this Deed of Trust and compliance with all of the other terms and provisions hereof, Beneficiary shall request Trustee to reconvey the Secured Property and surrender this Deed of Trust and all notes evidencing the Indebtedness to Trustee. Upon payment of its fees and any other sums owing to it under this Deed of Trust, Trustee shall reconvey the Secured Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any. The recitals in such conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy such notes and this Deed of Trust unless otherwise directed by Beneficiary.

5.26 Substitution of Trustee. Beneficiary may remove Trustee at any time or from time to time and appoint a successor trustee, and upon such appointment, all powers, rights, duties and authorities of Trustee shall thereupon become vested in such successor. Such substitute trustee shall be appointed by written instrument duly recorded in the county or counties where the real property covered hereby is located, which appointment may be executed by any authorized agent of Beneficiary or in any other manner permitted by applicable law.

5.27 Trustor Not Released. Extension of the time for payment or modification of the terms of payment of any sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by this Deed of Trust by reason of any demand made by the original Trustor. Without affecting the liability of any person, including Trustor, for the payment of the indebtedness secured hereby, or the lien of this Deed of Trust on the remainder of the Secured Property for the full amount of the indebtedness secured hereby, Beneficiary and Trustee are respectively empowered as follows: (A) Beneficiary may from time to time and without notice (1) release any person liable for the payment of all or any part of the indebtedness secured hereby, (2) extend the time or otherwise alter the terms of payment of any of the indebtedness, (3) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreement or any other instruments or security, or (4) alter, substitute or release any property securing the indebtedness secured hereby; (B) Trustee may, at any time, and from time to time, upon the written request of Beneficiary (1) consent to the making of any map or plat of the Secured Property or any part thereof, (2) join in granting any easement or creating any restriction thereon, (3) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge hereof, or (4) reconvey, without any warranty, all or part of the Secured Property.

5.28 Counterparts. This Deed of Trust may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same document.

5.29 Cross Collateralization and Cross Default. Trustor hereby acknowledges that (i) the Secured Property secures to Beneficiary the payment and performance of the Obligations and the Existing Obligations, (ii) Trustor and the Existing Borrower are jointly and severally liability for the Obligations and the Existing Obligations and (iii) Trustor is primarily liable for the Existing Obligations. Accordingly, if the Existing Borrower fails to pay fully, when due, any amount payable to Beneficiary under the Existing Loan, then Lender may, in its sole and absolute discretion, (A) treat such amount as being due and owing by Trustor, on a joint and several basis and (B) enforce its rights and remedies against, and collect such amount from Trustor and the Existing Borrower on a joint and several basis. In addition, as set forth in Section 3.01N above, any Event of Default under the Existing Loan Instruments shall be an Event of Default hereunder.

5.30 One Action Rule and Deficiency Statute. Grantor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Grantor under Utah Code Annotated §§ 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

UTAH STATUTE OF FRAUDS – NOTICE TO TRUSTOR. PURSUANT TO UTAH CODE. ANN. §25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THIS DEED OF TRUST AND THE OTHER WRITTEN LOAN INSTRUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT

ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Next page is signature page]

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

Trustor

SJ UTAH, LLC,
a Utah limited liability company

By:

Name: Christopher Simms

Title: Manager

State of North Carolina }

County of Mecklenburg }

I, Leanne Vaccaro, a Notary, certify that Christopher C. Simms personally came before me this day and acknowledged that he is Manager of SJ Utah, LLC, being authorized to do so, executed the foregoing on behalf of such limited liability company.

Witness my hand and official seal this 11th day of February, 2022.

(Official Seal)

Leanne Vaccaro

Official Signature of Notary

Leanne Vaccaro

Notary's Printed or Typed Name

Notary Public

My Commission Expires: 6/19/2026

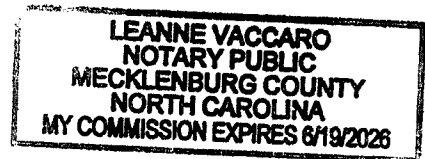


EXHIBIT A
LAND

CERTAIN LAND LOCATED IN SALT LAKE COUNTY, UTAH, SITUATED AS FOLLOWS:

PARCEL 1:

LOT 1, JORDAN STATION APARTMENTS RESIDENTIAL DEVELOPMENT, RECORDED OCTOBER 15, 2014 AS ENTRY NO. 11929644 IN BOOK 2014P AT PAGE 264 IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

PARCEL 2:

THOSE RIGHTS AND EASEMENTS CONTAINED WITHIN THAT CERTAIN GATEWAY RETAIL PARTNERS, LLC & SJ UTAH, LLC SHARED PARKING AGREEMENT FOR THE JORDAN STATION APARTMENTS, RECORDED JULY 16, 2014, AS ENTRY NO. 11882201 IN BOOK 10245 AT PAGE 9645 OF OFFICIAL RECORDS AND THAT CERTAIN AMENDMENT OF GATEWAY RETAIL PARTNERS, LLC & SJ UTAH, LLC SHARED PARKING AGREEMENT FOR THE JORDAN STATION APARTMENTS RECORDED JULY 17, 2014, AS ENTRY NO. 11882876 IN BOOK 10246 AT PAGE 2972 OF OFFICIAL RECORDS.

PARCEL NO. 27-13-178-013