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TRD- TRUST DEED

Rashelle Hobbs, Recorder, Salt Lake County, Utah

Return To: NATIONAL TITLE AGENCY OF UTAH, INC.

6770 S 900 EMIDVALE, UT 840471773

When Recorded Return To:

Nancy W. Greene, Esq.  
Miles & Stockbridge, P.C.  
100 Light Street  
Baltimore, Maryland 21201

**Tax Parcel ID #: 16-06-403-027-0000**

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

by

**500 EAST MULTIFAMILY OWNERSHIP, LLC,**  
a Delaware limited liability company,  
as Trustor

to and in favor of

**CHICAGO TITLE INSURANCE COMPANY, INC.,**  
a Florida corporation,  
as Trustee,

and

**M&T BANK,**  
a New York banking corporation,  
in its capacity as Administrative Agent for the Lenders,  
as Beneficiary

This document constitutes a security agreement and financing statement (Fixture Filing) under the Utah Uniform Commercial Code and is to be filed in the office where a mortgage on the Real Property would be recorded which is the office of the Recorder of Salt Lake County, Utah.

Trustor is the record owner of the Property.

Trustor's Organizational Identification Number in Delaware is: 7832553  
And Trustor's Registration Number in Utah is: 11652852-0161

This Deed of Trust constitutes a "Construction Mortgage" within the meaning of Utah Code Annotated Section 70A-9a-334(8) or any successor statute. The proceeds of the loan secured by this Deed of Trust are to be used by Trustor in part for the purpose of funding the construction and development of the Property described herein and are to be disbursed in accordance with the provisions of the Financing Documents (as hereinafter defined).

**DEED OF TRUST, ASSIGNMENT,  
Fixture Filing And Security Agreement**

**THIS DEED OF TRUST, ASSIGNMENT, FIXTURE FILING AND SECURITY AGREEMENT** (this “Deed of Trust”) is made this 6<sup>th</sup> day of April, 2022, by **500 EAST MULTIFAMILY OWNERSHIP, LLC**, a Delaware limited liability company (“Trustor”), in favor of **CHICAGO TITLE INSURANCE COMPANY, INC.**, a Florida corporation, as Trustee (the “Trustee”), for the benefit of **M&T BANK**, a New York banking corporation, as Administrative Agent (“Agent”) for the Lenders identified below.

**ARTICLE 1**

**Definitions; Granting Clauses; Secured Indebtedness**

Section 1.1. Principal Secured. This Deed of Trust secures the obligation of Trustor under the terms of a certain senior secured credit facility from Lenders to Trustor in the principal amount of Thirty-Four Million Seven Hundred Sixty-Eight Thousand Dollars (\$34,768,000) (as the same may be renewed, extended, supplemented, increased or modified, from time to time, the “Loan”), plus such additional amounts as Lenders may from time to time advance pursuant to the terms and conditions of this Deed of Trust, the Loan Agreement (as herein defined) and/or any of the other Loan Documents (as herein defined), together with interest thereon.

Section 1.2. Definitions. (a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“Agent”: M&T Bank, a New York banking corporation, and its successors and assigns as the Administrative Agent under the Loan Agreement.

“Assignment of Leases”: The Assignment of Lessor’s Interest in Leases dated of even date herewith executed by Trustor in favor of Agent and Lenders and all other assignments of leases and/or rents given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part, all as the same may be from time to time renewed, extended, supplemented, increased or modified.

“Guarantor”: Individually and collectively, Individual Guarantor and LLC Guarantor.

“Holder”: Individually and collectively, Lenders and any other subsequent holder at the time in question of the Notes, or any of them, or of all or any portion of the indebtedness secured hereby.

“Individual Guarantor”: Joseph R. Scuderi, a New York resident, and his heirs and personal representatives.

“Lenders”: Each of the financial institutions now or hereafter identified as a “Lender” in the Loan Agreement, and their respective successors and assigns.

“LLC Guarantor”: Jolaine Associates, LLC a New York limited liability company, and its successors and permitted assigns.

“Loan”: Shall have the meaning ascribed to such term in Section 1.1 above.

**“Loan Agreement”**: The Construction Loan Agreement dated of even date herewith executed by and among Trustor, Agent and Lenders pursuant to which the proceeds of the Notes shall be disbursed and all other loan agreements given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part, all as the same may be from time to time renewed, extended, supplemented, increased or modified.

**“Loan Documents”**: This Deed of Trust, the Notes, the Loan Agreement, the Assignment of Leases and any and all instruments, documents and agreements now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the Loan, including but not limited to any credit agreement, multi-party financing agreement, Swap Contract relating to any Swap Transaction or other agreement executed by Trustor, Guarantor and/or any other party or parties, pertaining to the repayment or use of the proceeds of the Loan, as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified.

**“Notes”**: One or more Promissory Notes dated of even date herewith made by Trustor and payable to the order of Lenders in the aggregate principal amount of the Loan, bearing interest as therein provided and containing a provision for, among other things, the payment of attorneys’ fees, and all other notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part, all as the same may be from time to time renewed, extended, supplemented, increased or modified.

**“Required Lenders”**: Shall have the meaning ascribed to such term in the Loan Agreement.

**“Swap Contract”**: Any agreement relating to any Swap Transaction, including, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into prior to the date hereof, contemporaneously herewith or any time after the date hereof with respect to the Loan between Swap Counterparty and Trustor (or its Affiliate (as defined in the Loan Agreement)), together with any related schedule and confirmation, as amended, supplemented, superseded or replaced from time to time.

**“Swap Counterparty”**: Agent, any Lender or any Affiliate of Agent or any Lender, in its capacity as counterparty under any Swap Contract.

**“Swap Transaction”**: Any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond option, note or bill option, interest rate option, forward foreign exchange transaction, cap transaction, collar transaction, floor transaction, currency swap transaction, cross-currency rate swap transaction, swap option, currency option, credit swap or default transaction, T-lock, or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, entered into any time prior to the date hereof, contemporaneously herewith or any time after the date hereof between Swap Counterparty and Trustor (or its Affiliate) so long as a writing, such as a Swap Contract, evidences the parties’ intent that such obligations shall be secured by this Deed of Trust in connection with all or any portion of the indebtedness described in the Loan Agreement.

**“Trustee”**: Chicago Title Insurance Company, Inc., a Florida corporation, and any one or more successors or substitutes appointed and designated as herein provided from time to time acting hereunder, any one of whom may act alone. Whenever in this Deed of Trust reference is made to Trustee, it shall be construed to mean, individually and collectively, the trustee or trustees for the time being, whether original or successor or successors in trust. All title, estate, rights, powers, trusts and duties hereunder given or appertaining to or devolving upon Trustee shall be in each Trustee so that any action hereunder

or purporting to be hereunder of any one of the original or any successor Trustee shall for all purposes be considered to be, and as effective as, the action of all persons named as Trustee.

(b) Any term used or defined in the Uniform Commercial Code, as adopted and in effect in the State of Utah from time to time, and not defined in this Deed of Trust has the meaning given to the term in the Uniform Commercial Code, as in effect from time to time, when used in this Deed of Trust; provided, however, if a term is defined in Article 9 of the Uniform Commercial Code differently than in another article of the Uniform Commercial Code, the term has the meaning specified in Article 9.

(c) Any other capitalized term used, but not defined herein, shall have the meaning ascribed to such term in the Loan Agreement.

**“Trustor”**: Widewaters 500 East Company, LLC, a Delaware limited liability company, and its successors and permitted assigns.

**“UCA”**: The Utah Code Annotated, as amended from time to time.

Section 1.3. **Granting Clause**. In consideration of the provisions of this Deed of Trust and the sum of TEN DOLLARS (\$10.00) cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are acknowledged by Trustor, Trustor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER, with power of sale, unto Trustee, for the benefit of Agent and Holder, with power of sale, the following: (a) Trustor’s fee simple interest in the real property described in Exhibit A attached hereto and made a part hereof (all of the parcels of real property described in Exhibit A being hereinafter referred to collectively as the “Land”), together with: (i) all right, title and interest of Trustor, now owned or hereafter acquired, in and to any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on, in or as a part of, the Land (collectively the “Improvements”); and (ii) all right, title and interest of Trustor, now owned or hereafter acquired, in and to (1) an undivided interest in all common areas and elements applicable to the Land and/or the Improvements pursuant to the terms of any condominium declaration or by-laws to which the Land and/or the Improvements are now or hereafter subject; (2) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (3) any strips or gores between the Land and abutting or adjacent properties; (4) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (5) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the “Premises”); (b) all right, title and interest of Trustor, now owned or hereafter acquired, in and to all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Trustor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the “Accessories,” all of which are hereby declared to be permanent accessions to the Land); (c) to the fullest extent that Trustor can grant a lien thereon and/or security interest therein, all (i) plans and specifications for the Improvements; (ii) Trustor’s rights, but not liability for any breach by Trustor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal

government sponsored program or entity), Swap Contracts, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof, and all condominium documents, including all rights of Trustor as a declarant thereunder; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Trustor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Document for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Trustor may from time to time authorize Agent to debit and/or credit payments due with respect to the Loan or any Swap Contract, all rights to the payment of money from Agent under any Swap Contract, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Contract; (iv) all right, title and interest of Trustor, now owned or hereafter acquired, in and to all permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, including without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, licenses for the sale of alcoholic beverages from the Premises, air quality permits, software licenses, and any renewals, extensions, replacements or substitutions therefor; (v) all right, title and interest of Trustor, now owned or hereafter acquired, in and to all Leases, Rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof), including without limitation, all issues and profits and any other payments by any and all guests or any third-party which may hereafter become due pursuant to any such agreements, and any and all moneys, awards or other payments made or payable by any and all guests or any third-party insurer in lieu of rent, including, but not limited to, any damages which may hereafter become due pursuant to any such Leases, subleases or other agreements; (vi) all right, title and interest of Trustor, now owned or hereafter acquired, in and to all contracts of sale covering all or any portion of the Premises, whether now or hereafter executed, and all proceeds thereof, any funds deposited thereunder to secure performance by the purchasers of their obligations, and the right to receive and collect all payments due under any contract of sale; (vii) all right, title and interest of Trustor, now owned or hereafter acquired, in and to all as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (viii) all right, title and interest of Trustor, now owned or hereafter acquired, in and to all engineering, accounting, title, legal, and other technical or business data concerning the Property; and (d) to the fullest extent that Trustor can grant a lien thereon and/or security interest therein, all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Trustor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Trustor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Trustor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests;

and if the estate of Trustor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Trustor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Trustee, and his, her, its or their successors or substitutes in this trust, and to his, her, its or their successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Trustor under the Notes and the other Loan Documents and all other indebtedness and matters defined as "Secured Indebtedness" in Section 1.5 of this Deed of Trust.

PROVIDED, HOWEVER, that if Trustor shall promptly pay or cause to be paid to Agent the principal sum, including all additional advances and all other sums payable by Trustor to Agent under the terms of the Loan Documents and shall perform or cause to be performed all the other terms, conditions, agreements and provisions contained in the Loan Documents, then this Deed of Trust and the estate hereby granted shall cease, terminate and become void and Agent shall direct Trustee thereafter to release this Deed of Trust of record.

**Section 1.4. Security Interest.** Trustor hereby grants to Agent for the benefit of Holder a security interest under the Utah Uniform Commercial Code in all of the Property which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Collateral") to secure the obligations of Trustor under the Notes and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Deed of Trust. In addition to its rights hereunder or otherwise, Agent shall have all of the rights of a secured party under the Utah Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law. Notwithstanding anything contained herein to the contrary, however, if, now or in the future, any of the Secured Indebtedness covered by this Deed of Trust, or by any lien created hereby, includes any Special Flood Zone Loan (as hereinafter defined), then the following shall apply: any such Special Flood Zone Loan shall not be secured pursuant to any security interest or lien created by this Deed of Trust in personal property that would constitute "contents" located within any Flood Zone Improvements (as hereinafter defined) securing such Special Flood Zone Loan. For purposes of the foregoing, (a) the term "Flood Zone Improvements" shall mean any "improved" real property that is located within a Special Flood Hazard Area, (b) a "Special Flood Zone Loan" means a loan, line of credit or other credit facility which is secured by Flood Zone Improvements, and (c) the terms "improved" real property, "Special Flood Hazard Area," and "contents" shall have the meanings ascribed to them by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq., and implementing regulations, 44 C.F.R. Parts 59 et seq., and/or the Federal Emergency Management Agency, all as may be amended from time to time.

**Section 1.5. Secured Indebtedness, Loan Documents, Other Obligations.** This Deed of Trust is made to secure and enforce the payment and performance of the following obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively the "Secured Indebtedness"):

- (a) the Notes and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part;
- (b) all indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Trustor to Agent or Holder now or hereafter incurred or arising pursuant to or permitted by the provisions of the Notes, this Deed of Trust, or any other Loan Document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the Loan; and
- (c) all other Obligations (as defined in the Loan Agreement), including without limitation, those obligations arising under any Swap Contract now or hereafter relating

to any Swap Transaction. In particular, and not in limitation of the foregoing, this Deed of Trust secures all present and future loan disbursements made by Agent or Holder under the Notes, and all other sums from time to time owing to Agent and/or Holder by Trustor under the terms of the Loan Agreement.

## ARTICLE 2

### Representations, Warranties and Covenants

Section 2.1. Trustor represents, warrants, and covenants as follows:

(a) Payment and Performance. Trustor will make, or cause to be made, due and punctual payment of the Secured Indebtedness. Trustor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Deed of Trust and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Deed of Trust.

(b) Title and Permitted Encumbrances. Trustor has, in Trustor's own right, and Trustor covenants to maintain, lawful, good and marketable fee simple title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth in the mortgagee's title insurance policy issued to Agent in connection with this Deed of Trust, and insuring the lien hereof, which are Permitted Encumbrances (as hereinafter defined) only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Deed of Trust, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, (iv) all Leases now or hereafter executed in accordance with the terms of the Loan Agreement, and the rights of tenants thereunder, (v) other liens and security interests (if any) in favor of Lenders, and (vii) easements, covenants, conditions, and other agreements expressly permitted by the terms of the Loan Documents or otherwise approved by Agent (the matters described in the foregoing clauses (i), (ii), (iii), (iv), (v) and (vi) being herein called the "Permitted Encumbrances"). Trustor, and Trustor's successors and assigns, will warrant specially and forever defend title to the Property, subject as aforesaid, to Trustee and their successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof by, through or under Trustor. Trustor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance in any material manner without the prior written consent of Agent. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Agent of any existing or future violation or other breach thereof by Trustor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Trustor if Trustor is an individual. If any right or interest of Agent in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, then following written notice to Trustor making demand of Trustor to undertake the defense or contest of such issue or to have its title insurer do so, with such bonding or insurance as Agent reasonably may require, and the failure of Trustor to do so within such time as Agent deems reasonable, Trustee and Agent, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Agent, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Trustor hereby promises to pay) owing by Trustor to Agent or Trustee (as the case may be), and the party (Agent or Trustee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Trustor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, and in any event prior to delinquency, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Agent such evidence of the payment thereof as Agent may require. Notwithstanding the foregoing, Trustor shall not be required to pay any such taxes, assessments, charges or other levies so long as Trustor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) Trustor notifies Agent in advance that Trustor intends to initiate such proceedings, (b) such proceedings operate to prevent the collection of, or other realization upon, the taxes, assessments, charges or other levies so contested, (c) there will be no sale, forfeiture or loss of the Property during the contest, (d) neither Agent nor Trustee is subject to any claim, cost, liability or expense as a result thereof, and (e) Trustor provides assurances satisfactory to Agent (including, without limitation, if required by Agent, the establishment of an appropriate reserve account with Agent of its ability to pay such taxes, assessments, charges and other levies in the event Trustor is unsuccessful in its contest). Each such contest shall be promptly prosecuted to final conclusion or settlement, and Trustor shall indemnify and save Agent and Trustee harmless against all claims, cost, liability or expense as a result thereof or in connection therewith. Promptly after the settlement or conclusion of such contest or action, Trustor shall pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interest, costs and expenses in connection therewith.

(d) Insurance.

(i) Trustor shall obtain and maintain at Trustor's sole expense mortgagee title insurance issued to Agent covering the Property as required by Agent without exception for mechanics' liens.

(ii) Trustor, at its sole cost and expense, shall obtain and maintain and/or shall cause to be maintained during the course of any construction work on or about the Property, insurance for Trustor and for the Property providing at least the following coverages:

(1) Trustor shall cause any architect or engineer to obtain and maintain architect's and engineer's Professional Liability Insurance during the period commencing on the date of such architect's agreement or the date of the engineer's agreement, respectively, and continuously renewing for a period no less than the statute of limitations in the State of Utah during which claims can be made after substantial completion. Such insurance shall be in an amount equal to at least \$2,000,000 per claim and in the annual aggregate, or such other amount acceptable to Agent. Any subcontractor any such architect or engineer shall maintain such insurance in an amount not less than \$1,000,000 per claim and in the annual aggregate or such other amount acceptable to Agent;

(2) Trustor shall maintain the following insurance for personal injury, bodily injury, death, accident and property damage: (x) liability insurance, including commercial general liability insurance; and (y) owned (if any), hired, and non-owned automobile liability insurance. Liability insurance shall be in the so-called "occurrence" form and shall provide coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate, per location. Liability insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability (including, without limitation, any liability assumed under any leases), and products and completed operations;

(3) Trustor shall maintain excess liability insurance in an amount not less than \$15,000,000 per occurrence and in the annual aggregate on terms consistent with the commercial general liability insurance required under subsection (2) above;

(4) Trustor shall ensure that any general contractor or construction manager employed by it shall maintain (x) commercial general liability coverage, with such general contractor or construction manager as "named insureds" including products and completed operations coverage containing no exclusions or limitation for residential construction with respect to the construction project and that shall be continuously renewed for the statutory period during which claims can be made following completion of the work on or about the Property, (y) automobile liability insurance (including owned, hired and non-owned liability) with limits of at least \$1,000,000, and (z) umbrella/excess liability insurance with no less than \$25,000,000 in limits per occurrence and in the annual aggregate per project, and in addition Trustor shall ensure that all trade contractors provide similar liability insurance coverage with umbrella liability limits that are commensurate with the risks presented by their operations at the site as determined by the general contractor or construction manager. All parties engaged in work on about the Property or on any restoration shall maintain workers' compensation and employer's liability insurance as required by law in force for all workers on the job. A certificate of insurance shall be issued to Trustor and Agent, naming each as "additional insured" (except with respect to workers' compensation and employer's liability and professional liability, as applicable), and evidencing all insurance required in this subsection. Trustor and Agent shall be named as "additional insured" with respect to the general contractor or construction manager's ongoing operations and completed operations by endorsements satisfactory to Agent. Such insurance (other than the excess/umbrella liability insurance) shall be primary and any other insurance maintained by the additional insured shall be excess only and not contributing with this insurance;

(5) Workers' compensation, subject to the statutory limits of the State of Utah, and employer's liability insurance in respect of any work or operations on or about the Property, or in connection with such work or the operations of the Property (if applicable);

(6) Property insurance in the so-called "Builders' Risk Completed Value Non Reporting Form" which shall be written on an "All-Risk" or Special Cause of Loss form. Such policy to include coverage for the existing structure as well as the hard costs of such construction. The policy shall include coverage for boiler and machinery risk (once equipment is energized, with the exclusion for testing removed), earthquake, flood, collapse, theft, burglary and acts of terrorism, in an amount equal to the full replacement cost of the construction project without deduction for depreciation (earthquake and flood may have a sublimit of such amount as is reasonable acceptable to Agent) with endorsements providing one hundred percent (100%) replacement cost coverage, agreed amount without margin clause, and/or coinsurance waiver and with a maximum deductible of \$25,000 (or such other amount as Agent may agree to in Agent's sole and absolute discretion). The policy shall also include coverage for (x) loss of materials, furniture, fixtures and equipment, machinery, and supplies which become part of the completed project whether on-site, in transit, or stored off-site, or loss of any temporary structures, sidewalks, retaining walls, and underground property; (y) soft costs including coverage for 100% of the interest expense during the period of the construction and coverage for recurring expenses including, but not limited to, plans, specifications, blueprints and models, property taxes, real estate commissions, advertising, architectural

and engineering supervisory costs, legal and accounting costs; and (z) loss of the value of the undamaged portion of the construction project, and additional expense of demolition, debris removal, and increased cost of construction arising from operation of building laws or other legal requirements at the time of restoration, subject to a sublimit satisfactory to Agent. The policy shall also be endorsed to include permission for partial occupancy;

(7) If and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy on the Improvements and any Trustor owned contents in an amount reasonably required by Agent, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; provided however, that if the Secured Indebtedness relates to construction of the Improvements, then the flood insurance policy on any contents located within a Flood Zone designated A or V shall be required upon completion of the Improvements or any unit or component thereof, or as soon thereafter as a flood insurance policy on contents must be obtained;

(8) Upon thirty (30) days' written notice, such other reasonable insurance and in such reasonable amounts as Agent from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(iii) In addition to the foregoing, for so long as this Deed of Trust remains in effect, Trustor, at its expense, shall maintain for the benefit Trustor Agent, as applicable, the following insurance:

(1) Commercial General Liability Insurance on a so called "occurrence" form with limits of not less than \$1,000,000 per occurrence combined single limit and \$2,000,000 per location and in the aggregate for the policy period, or in whatever higher amounts as may be required by Agent from time to time by notice to Trustor (with deductibles acceptable to Agent), and extended to cover: (a) contractual liability assumed by Trustor with defense provided in addition to policy limits for indemnities of the named insured, (b) if any of the work is subcontracted, Independent Contractors Liability providing coverage in connection with such portion of the work which may be subcontracted, (c) Broad Form Property Damage Liability, (d) Products & Completed Operations for coverage, such coverage to apply for two years following completion of construction, (e) waiver of subrogation against all parties named additional insured, (f) severability of interest provision, and (g) Personal Injury & Advertisers Liability.

(2) Automobile Liability including coverage on owned, hired and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than \$1,000,000.00 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.

(3) Umbrella/Excess Liability in excess of Commercial General Liability, Automobile Liability and Employers' Liability coverages which is at least as broad as these underlying policies with a limit of liability of \$25,000,000.00.

(4) Comprehensive "all risk" or "special causes of loss" insurance on the Improvements and the personal property at the Loan Project, in each case (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to such Improvements and personal property waiving all coinsurance provisions; (C) providing for no deductible in excess of \$25,000 for all such insurance coverage; and (D) coverage for Operation of Building Laws, Demolition Costs and Increased Cost of Construction. Such policy(ies) shall cover at least the following perils: building collapse, fire, earthquake, back-up of sewers and drains, water damage, wind (including named storm), acts of terrorism, impact of vehicles and aircraft, lightning, malicious mischief, theft, burglary, and vandalism (earthquake may have a sub-limit of such amount as is acceptable to Agent). In addition, Trustor shall obtain: (y) flood insurance in an amount satisfactory to Agent provided, if any portion of the Property is currently or at any time in the future located in a "special flood hazard area" designated by the Federal Emergency Management Agency, flood hazard insurance in an amount equal to the greater of (1) maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or (2) such other limit as is reasonably acceptable to the Agent; and (z) earthquake insurance in amounts and in form and substance reasonably satisfactory to Agent provided that the insurance pursuant to clauses (y) and (z) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this subsection (iv);

(5) Workers' Compensation and Employer's Liability Insurance in accordance with the applicable laws of the state in which the work is to be performed or of the state in which Trustor is obligated to pay compensation to employees engaged in the performance of the work. The policy limit under the Employer's Liability Insurance section shall not be less than \$1,000,000.00 for any one accident.

(6) Trustor shall maintain business gross income and rent loss insurance (if applicable) (A) with loss payable to Agent; (B) covering all risks required to be covered by the insurance provided for in subsection (iv) above and subsections (viii) (as applicable) and (ix) below; on an "actual loss sustained" basis without time limit and subject only to policy limits (which shall be equal to no less than 18 month of Gross rental income). In addition, Business Income and Rent Loss Insurance (if applicable) shall be endorsed to include an extended period of indemnity of three hundred sixty five (365) days. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Trustor 's reasonable estimate of the Gross Revenue from the Property for the succeeding eighteen (18) month period. All proceeds payable to Agent pursuant to this subsection shall be held by Agent and shall be applied to the Obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Trustor of its Obligations to pay the Secured Indebtedness on the respective dates of payment provided for in the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(7) At all times during which structural construction, demolition, repairs or alterations are being made with respect to the Improvements, and only if the property coverage form does not otherwise apply, (A) owner's contingent or protective liability

insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called Builder's Risk Completed Value form (1) on a non-reporting basis, (2) against "all risks" insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(8) Comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Agent on terms consistent with the commercial property insurance policy required under subsection (iv) above; and

(9) Upon thirty (30) days' written notice, such other reasonable insurance and in such reasonable amounts as Agent from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(iv) All insurance policies shall (i) be obtained under valid and enforceable policies; (ii) list Trustor a "named insured"; (iii) be issued by an insurance company licensed to do business in the state where the Project is located having a rating of "A" VIII or better by A.M. Best Co., in Best's Rating Guide, (VIII) name Agent as "additional insured" on all liability insurance and as "mortgagee" and "loss payee" on all All-Risk Property, flood insurance, earthquake insurance and rent loss or business interruption insurance (whether or not required hereunder), (v) be endorsed to show that Trustor's insurance shall be primary and all insurance carried by Agent is strictly excess and secondary and shall not contribute with Trustor's insurance, (iv) provide that Agent is to receive not less than ten (10) days' prior written notice to Agent of any cancellation for nonpayment of premiums, and thirty (30) days written notice prior to non-renewal or cancellation, (v) be evidenced by a certificate of insurance to be provided to Agent along with a copy of policies required hereunder, (vi) Certificates of insurance on an ACORD 28 form with respect to property and a ACORD 25 form with respect to liability, and (vii) be in form and amounts acceptable to Agent; provided, however, that with respect to any flood insurance required hereunder, acceptable proof of coverage shall not include certificates of insurance. Agent, at its option and upon notice to Trustor, may retain, at Trustor's expense, an insurance consultant to review the insurance for the Property and Improvements to confirm that it complies with the terms and conditions set forth herein.

(v) All Policies shall contain clauses or endorsements to the effect that:

(1) If the carrier denies a claim of Trustor because of Trustor's acts or because Trustor has failed to comply with the terms of the applicable policy, Agent will still have the right to receive loss payment as long as Agent complies with the applicable conditions of the policy;

(2) The policies shall not be materially changed (other than to increase the coverage provided thereby) or canceled without at least thirty (30) days' prior written notice to Agent and any party named therein as an additional insured;

(3) The issuers thereof shall give written notice to Agent if the policies have not been renewed ten (10) business days prior to their expiration;

(4) Agent shall not be liable for any insurance premiums thereon or subject to any assessments thereunder;

(5) The policies do not contain an exclusion for acts of terrorism or similar acts of sabotage;

(6) Any claim or defense the insurance company may have against Trustor to deny payment of any claim by Trustor thereunder shall not be effective against lenders (and affirmatively providing that the insurance company will pay the proceeds of such policy to lenders notwithstanding any claim or defense of the insurance company against Trustor) and such policies shall also contain a standard "Waiver of Subrogation" endorsement; and

(7) All such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Agent as mortgagee with loss proceeds payable to Agent notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Agent under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents.

(vi) Trustor shall deliver to Agent, at least ten (10) days before the expiration of an existing policy, evidence acceptable to Agent of the continuation of the coverage of the expiring policy. If Agent has not received satisfactory evidence of such continuation of coverage in the time frame herein specified, Agent shall have the right, but not the obligation, to purchase such insurance for Agent's and interest only. Any amounts so disbursed by Agent pursuant to this Section shall be repaid by Trustor within 10 days after written demand therefor. Nothing contained in this Section shall require Agent to incur any expense or take any action hereunder, and inaction by Agent shall never be considered a waiver of any right accruing to Agent on account of this Section. The payment by Agent of any insurance premium for insurance which Trustor is obligated to provide hereunder but which Agent believes has not been paid, shall be conclusive between the parties as to the legality and amounts so paid. Trustor agrees to pay all premiums on such insurance as they become due, and will not permit any condition to exist on or with respect to the Property which would wholly or partially invalidate any insurance thereon.

(vii) Unless Trustor provides Agent with evidence satisfactory to Agent of the insurance coverage required by this agreement, Agent may purchase insurance at Trustor's expense to protect Agent's interest in the Property. This insurance may, but need not, protect Trustor's interest in the Property. The coverages that Agent purchases may not pay any claim that Trustor makes or any claim that is made against Trustor in connection with the Property. Trustor or Agent (as appropriate) may later cancel any insurance purchased by Agent, but only after Agent receives satisfactory evidence that Trustor has obtained insurance as required by this Agreement. If Agent purchases insurance for the Property, Trustor will be responsible for the costs of that insurance, including any charges imposed by Agent in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at Agent's discretion, be added to Trustor's total principal obligation owing to Agent, and in any event shall be secured by the liens on the Property created by the Loan Documents. It is understood and agreed that the costs of insurance obtained by Agent may be more than the costs of insurance Trustor may be able to obtain on its own. If any loss occurs at any time when Trustor has failed to perform Trustor's covenants and agreements in this paragraph, Holder shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Trustor, to the same extent as if it had been made payable to Holder. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Trustor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies.

(viii) Trustor shall not carry any separate insurance on the Property concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Agent's prior written consent, and any such policy shall have attached a standard non-contributing mortgagee clause, with loss payable to Agent, and shall otherwise meet all other requirements set forth herein.

(ix) Until the occurrence of a Default (as hereinafter defined) and following the curing of such Default, Trustor shall have the right to make proof of loss for, and to settle and adjust any claim under any insurance for loss or damage to the Property; provided, however, that no such settlement involving a loss in excess of \$250,000 shall be made without the prior written consent of Agent, which consent shall not be unreasonably withheld or delayed. Subsequent to the occurrence and during the continuance of a Default, Agent shall have the right (but not the obligation) to make proof of loss for, and to settle and adjust any claim under, any insurance for loss or damage to the Property. Holder shall have the right to receive the proceeds of all insurance for loss of or damage to the Property, regardless of whether or not such insurance policies are required by Agent, and the expenses incurred by Agent in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Agent on demand. Agent shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Trustor. All insurance proceeds, after deduction therefrom of all reasonable expenses actually incurred by Agent, if any, in the collection of the same, including attorneys' fees, at Agent's option shall be (1) released to Trustor, or (2) applied (upon compliance with such terms and conditions as may be required by Agent) to repair or restoration, either partly or entirely, of the Property so damaged or (3) applied to the payment of the Secured Indebtedness in such order and manner as Agent, in its sole discretion, may elect, whether or not due; provided, however, that if no Default has occurred and shall be continuing hereunder, such proceeds shall be applied to the repair or restoration of the Property to the extent required by, and in strict compliance with, the terms hereof and of the other Loan Documents. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Trustor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property. In the event that, and to the extent that, insurance proceeds in excess of \$500,000 are to be applied to the restoration of the Property, each of the following conditions must also be met and complied with, as determined by Agent in its sole but reasonable discretion:

(1) An escrow account shall have been established with the Agent comprised of such insurance proceeds, and, if necessary, additional deposits made by Trustor, which, in the sole but reasonable judgment of Agent, are sufficient to restore the Property to its use, value and condition immediately prior to the casualty. Agent shall be entitled, at the expense of Trustor, to consult such professionals as Agent may deem necessary, in its sole but reasonable discretion, to determine the total commercially reasonable costs of restoring the Property. Trustor hereby assigns to, and grants Agent a security interest in, such escrow account and the funds therein to secure the payment and performance of the Secured Indebtedness. Trustor shall have furnished to Agent satisfactory evidence of the availability to Trustor of sums (including proceeds from rental loss or business interruption insurance, or both) in such amounts as Agent, in its reasonable judgment, considers sufficient to pay the debt service under the Notes, and all property assessments, insurance premiums and other sums becoming due from Trustor pursuant to this Deed of Trust and the other Loan Documents during the time required for restoration.

(2) All restoration will be conducted under the supervision of an architect or engineer, or both, selected and paid for by Trustor and reasonably approved in advance by Agent, and by a general contractor who shall be reasonably approved by Agent and shall have executed a guaranteed maximum price or fixed price contract if so required by Agent.

(3) The restoration will be performed pursuant to plans and specifications reasonably approved by Agent.

(4) Intentionally Deleted.

(5) All existing guaranties of the Loan shall remain in full force and effect and all guarantors shall so confirm to Agent.

If any of the foregoing conditions are not satisfied, Agent may, in its sole but reasonable discretion, apply all insurance proceeds to the payment of the Secured Indebtedness. Furthermore, if applied to restoration, all insurance proceeds (and any other funds required to be deposited with Agent) shall be disbursed from time to time in accordance with the terms and conditions of the Loan Agreement (to the extent applicable and/or as reasonably required by Agent in light of the extent of the casualty), and subject also to the following conditions (which shall control in the event of any conflict with the provisions of the Loan Agreement):

(1) Restoration shall commence within forty-five (45) days following receipt of the insurance proceeds by Agent and shall be completed within such time as may be reasonably determined by Agent in view of the extent of the casualty but, in any event, shall be completed within a reasonable period after the date the insurance proceeds are received; subject, however, to extensions resulting from conditions of force majeure or moratoria or delays in obtaining the necessary permits.

(2) At the time of each disbursement, no Default shall have occurred, which remains uncured.

(3) Restoration shall be performed in a workmanlike manner and in accordance with all applicable requirements of law.

(4) With respect to each disbursement and accompanying each request therefor, there shall be delivered to Agent a certificate addressed to Agent from the architect or engineer supervising the restoration stating that such disbursement is to pay the cost of restoration not paid previously by any prior disbursement, that all restoration completed to the date of such certificate has been completed in accordance with applicable laws and substantially in accordance with the approved plans and specifications, and that the amount of such disbursement, together with all other disbursements, does not exceed ninety percent (90%) of the aggregate of all costs incurred or paid on account of work, labor or services performed on, and materials installed in, the Property at the date of such certificate (or such greater amount as may be required by applicable law), and evidence reasonably satisfactory to Agent that all claims then existing for labor, services and materials have been paid in full or will be paid in full from the proceeds of the disbursement requested; provided, however, that at such time as the restoration is fifty percent (50%) completed, as verified by Agent, advances will increase to one hundred percent (100%) of the approved costs requisitioned, minus all previous advances and all amounts required to be paid by Trustor; provided, however, that (i) retainage shall never be less than five percent (5%) of the amount of the general contract without the prior written consent of Agent, unless otherwise required by applicable law, and (ii) Agent shall not be required to make advances for direct construction costs in excess of the aggregate advance which Trustor shall make to the general contractor.

(5) The final holdback shall be disbursed only upon delivery to Agent, in addition to the items required in paragraph (iv) above, of the following:

(A) Final waivers of liens from all contractors and major subcontractors.

(B) A certificate of the architect or engineer stating that the restoration has been substantially completed in good and workmanlike manner, substantially in accordance with the plans and specifications approved by the Agent and in accordance with all applicable laws.

(vi) At any time during the continuance of any Default, Agent may apply all insurance proceeds and any other sums deposited with Agent to the repayment of the Secured Indebtedness.

(e) Reserve for Insurance, Taxes and Assessments. Upon request of Agent made at any time after the occurrence of a Default which shall remain uncured beyond the expiration of any applicable cure period, Trustor shall, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, deposit with Agent a sum equal to all real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as reasonably estimated by Agent and prorated to the end of the calendar month following the month during which Agent's request is made, and thereafter will deposit with Agent, on each date when an installment of principal and/or interest is due on the Notes, sufficient funds (as reasonably estimated from time to time by Agent) to permit Agent to pay at least fifteen (15) days prior to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Agent shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. During the continuance of any Default, any excess over the amounts required for such purposes may be held by Agent for future use, applied to any Secured Indebtedness or refunded to Trustor, at Agent's option, and any deficiency in such funds so deposited shall be made up by Trustor upon demand of Agent. All such funds so deposited shall bear no interest, may be comingled with the general funds of Agent and shall be applied by Agent toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Agent by Trustor (which statements shall be presented by Trustor to Agent a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred and be continuing hereunder, such funds may at Agent's option be applied to the payment of the Secured Indebtedness in the order determined by Agent in its sole discretion, and that Agent may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Trustor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) without the prior written consent of Agent shall constitute an assignment or transfer of Trustor's interest in and rights to such funds held by Agent under this paragraph but subject to the rights of Agent hereunder.

(f) Condemnation. Trustor shall notify Agent promptly of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Trustor shall, at Trustor's expense, diligently prosecute any such proceedings. Agent shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Agent shall be entitled to receive all sums, in excess of \$250,000 which may be awarded or become payable to Trustor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to

Trustor for injury or damage to the Property. Trustor shall, promptly upon request of Agent, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Agent to collect and receipt for any such sums. All such sums are hereby assigned to Agent, and shall, after deduction therefrom of all actual and reasonable expenses actually incurred by Agent, including attorneys' fees, at Agent's option be (1) released to Trustor, or (2) applied (upon compliance with such terms and conditions as may be required by Agent) to repair or restoration of the Property so affected, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Agent, in its sole discretion, may elect, whether or not due; provided, however, that if no Default has occurred and is continuing hereunder and Agent has determined in its reasonable discretion that the taking of that portion of the Property affected by the condemnation proceedings will not prevent the functional restoration of the Improvements in all material respects, the proceeds shall be applied, to the extent necessary, to the repair or restoration of the Property and Agent shall make the proceeds available for such purpose. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Agent shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Trustor. During the existence of any Default hereunder, Agent is hereby authorized, in the name of Trustor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All reasonable costs and expenses (including but not limited to attorneys' fees) incurred by Agent in connection with any condemnation shall be a demand obligation owing by Trustor (which Trustor hereby promises to pay) to Agent pursuant to this Deed of Trust.

(g) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply in all material respects with all applicable Legal Requirements (hereinafter defined). Except as may be provided in any one or more of the Permitted Encumbrances or as otherwise agreed to by Agent, the Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement, and Trustor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Deed of Trust to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. To Trustor's knowledge, no improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. To the extent currently available, Trustor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property. If Trustor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Trustor will promptly furnish a copy of such notice or claim to Agent. As of the date hereof, Trustor has received no notice and has no actual knowledge of any such noncompliance which has not been cured. As used in this Deed of Trust: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any applicable federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(h) Maintenance, Repair and Restoration. Trustor will keep the Property in good working order, repair, operating condition and appearance (ordinary wear and tear excepted), causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, except as contemplated under the Loan Agreement, Trustor will not, without the prior written consent of Agent, (i) remove from the Property any fixtures or personal property covered by this Deed of Trust except such

as is replaced by Trustor by an article of equal suitability and value, owned by Trustor, free and clear of any lien or security interest (except that created by this Deed of Trust), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Trustor shall give prompt notice thereof to Agent and Trustor shall promptly, at Trustor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(i) No Other Liens. Trustor will not, without the prior written consent of Agent and Required Lenders, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Agent and Required Lenders, Trustor will cause the same to be promptly discharged and released or shall diligently contest the same, with such bonding or insurance against the enforcement thereof as Agent reasonably shall require. Trustor will own all parts of the Property and, except for office equipment and other personality leased in the ordinary course of business, will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Agent. If Agent and Required Lenders consent to the voluntary grant by Trustor of any deed of trust, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Deed of Trust and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Agent; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Agent may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Agent with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Trustor's rights hereunder without the prior written consent of Agent.

(j) Operation of Property. Trustor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Trustor will keep the Property occupied so as not to impair the insurance carried thereon. Trustor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with

respect thereto. Trustor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Trustor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Agent, which consent shall not be withheld unreasonably. Trustor will not do or suffer to be done any act whereby the value of any part of the Property may be materially impaired. Trustor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Agent, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Trustor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid when due.

(k) Financial Matters. Trustor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Trustor's knowledge, threatened) by or against Trustor, or Guarantor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Trustor to Agent in connection with the Loan evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading in any material respect. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Trustor or, to Trustor's knowledge, of Guarantor.

(l) Status of Trustor; Suits and Claims; Loan Documents. If Trustor is a corporation, partnership, limited liability company, or other legal entity, Trustor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Trustor has been duly authorized, executed and delivered by Trustor, and the obligations thereunder and the performance thereof by Trustor in accordance with their terms are and will continue to be within Trustor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be, to the best of Trustor's knowledge, in contravention of any Legal Requirement or any other document or agreement to which Trustor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Trustor or Guarantor, except as expressly contemplated by the Loan Documents. Except as otherwise heretofore expressly disclosed to Agent in writing, there is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Trustor's knowledge, threatened) against Trustor or Guarantor or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Trustor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Trustor's knowledge, threatened) against Trustor, or against any other person liable directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Agent in connection with the Loan. The Loan Documents constitute legal, valid and binding obligations of Trustor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the

availability of certain remedies may be limited by general principles of equity. Trustor is not a “foreign person” within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Trustor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The Loan evidenced by the Notes is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Trustor further warrants that the proceeds of the Notes shall be used for commercial purposes and stipulates that the Loan shall be construed for all purposes as a commercial loan. Trustor’s exact legal name is correctly set forth at the end of this Deed of Trust. If Trustor is not an individual, Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Trustor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Trustor will not cause or permit any change to be made in its name, identity (including its trade name or names), or corporate, limited liability company or partnership structure, without first obtaining the prior written consent of Agent, which consent may be withheld in Agent’s sole discretion. In particular, and not in limitation of the foregoing, Trustor shall not enter into, cause or permit to occur any merger or consolidation involving Trustor or any division of Trustor into two or more entities, or any creation or reorganization of Trustor into one or more series, whether or not permitted by applicable law. Trustor’s principal place of business and chief executive office, and the place where Trustor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans, specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Trustor) been and will continue to be (unless Trustor notifies Agent of any change in writing at least 30 days prior to the date of such change) the address of Trustor set forth at the end of this Deed of Trust. If Trustor is an individual, Trustor’s principal residence has for the preceding four months been and will continue to be (unless Trustor notifies Agent of any change in writing at least 30 days prior to the date of such change) the address of the principal residence of Trustor set forth at the end of this Deed of Trust. Trustor’s organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Deed of Trust. Trustor shall promptly notify Agent (i) of any change of its organizational identification number, or (ii) if Trustor does not now have an organization identification number and later obtains one, of such organizational identification number.

(m) Certain Environmental Matters. Trustor shall comply with the terms and covenants of that certain Environmental Indemnity Agreement dated of even date herewith (the “Environmental Agreement”).

(n) Further Assurances. Trustor will, promptly on request of Agent, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Deed of Trust or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further deeds of trust, security agreements, financing statements, financing statement amendments, continuation statements and assignments of rents or leases) and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as reasonably deemed advisable by Agent to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be reasonably necessary, desirable or proper in the reasonable determination of Agent to enable Agent to comply with the requirements or requests of any agency having jurisdiction over Agent or any examiners of such agencies with respect to the indebtedness secured hereby, Trustor or the Property. Trustor shall pay all reasonable costs connected

with any of the foregoing, which shall be a demand obligation owing by Trustor (which Trustor hereby promises to pay) to Agent pursuant to this Deed of Trust.

(o) Fees and Expenses. Without limitation of any other provision of this Deed of Trust or of any other Loan Document and to the extent not prohibited by applicable law, Trustor will pay, and will reimburse to Agent and/or Trustee on demand to the extent paid by Agent and/or Trustee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer, stamp and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, attorneys' fees, architect fees, engineer fees, construction consultant fees, environmental inspection fees, survey fees, and all other reasonable costs and expenses of every character incurred by Trustor or Agent and/or Trustee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the Loan, and any and all amendments and supplements to this Deed of Trust, the Notes or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Trustor as owner of the Property; and (ii) all reasonable out-of-pocket costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Trustor, hereunder or under any other Loan Document.

(p) Indemnification.

(i) Trustor will indemnify and hold harmless Agent, Lenders and Trustee from and against, and reimburse Agent, Lenders and Trustee on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the terms "Agent", "Lenders" and "Trustee" shall include any persons owned or controlled by, owning or controlling, or under common control or affiliated with Agent, Lenders or Trustee respectively and the directors, officers, partners, employees, attorneys, agents and representatives of Agent, Lenders and Trustee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this paragraph (p) by Trustor to Agent, Lenders and/or Trustee shall be a demand obligation owing by Trustor (which Trustor hereby promises to pay) to Agent, Lenders and/or Trustee pursuant to this Deed of Trust. Nothing in this paragraph, elsewhere in this Deed of Trust or in any other Loan Document shall limit or impair any rights or remedies of Agent, Lenders and/or Trustee (including without limitation any rights of contribution or indemnification) against Trustor or any other person under any other provision of this Deed of Trust, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages, causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Agent, Lenders and/or Trustee at any time and from time to time, except for any matters arising out of the gross negligence or willful misconduct of Agent, Lenders and/or Trustee, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Deed of Trust or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any

cause whatsoever at any time on or before the Release Date (hereinafter defined) any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Trustor of any representation, warranty, covenant, agreement or condition contained in this Deed of Trust or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in full, or (ii) the date on which the lien of this Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Trustor and Trustor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Deed of Trust but will survive the Release Date, foreclosure of this Deed of Trust or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness, the termination of any and all Swap Contracts, the discharge and release of this Deed of Trust and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(q) Records and Financial Reports. Trustor agrees to provide to Agent, as and when required, the Financial Statements and other financial information required to be delivered to Agent with respect to Trustor and the Property pursuant to the terms of the Loan Agreement and the other Loan Documents, in the form and detail required by the Loan Documents.

(r) Taxes on Notes or Deed of Trust. Trustor will promptly pay all income, franchise and other taxes owing by Trustor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Trustor is prohibited by law) which may be required to be paid with respect to the Notes, this Deed of Trust or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Agent, the Notes, the Property or this Deed of Trust deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Agent the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Deed of Trust or the Secured Indebtedness or Agent, then, and in any such event, Trustor, within fifteen (15) Business Days after demand by Agent, shall pay such taxes, assessments, charges or liens, or reimburse Agent therefor; provided, however, that if in the reasonable opinion of counsel for Agent (i) it might be unlawful to require Trustor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Agent may elect, by notice in writing given to Trustor, to declare all of the Secured Indebtedness to be and become due and payable ninety (90) days from the giving of such notice.

(s) Statement Concerning Notes or Deed of Trust. Trustor shall at any time and from time to time furnish within ten (10) days of request by Agent (but not more frequently than twice in any twelve (12) month period) a written statement in such form as may be required by Agent stating that (i) the Notes, this Deed of Trust and the other Loan Documents are valid and binding obligations of Trustor, enforceable against Trustor in accordance with their terms; (ii) the unpaid principal balance of the Notes; (iii) the date to which interest on the Notes is paid; (iv) the Notes, this Deed of Trust and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Notes, this Deed of Trust or any other Loan Document. If any of the

foregoing statements in clauses (i), (iv) and (v) are untrue, Trustor shall, alternatively, specify the reasons therefor.

(t) Condominium Regime(s). In the event that the Property is currently subject to one or more condominium regimes, or in the event that, at any time during the term of the Loan, Trustor proposes to subject all or any portion of the Property to one or more condominium regimes, all aspects of each such condominium regime shall be subject to approval by Agent, which approval shall not be unreasonably withheld or delayed. Prior to the registration of a condominium regime, at any time subsequent to the date hereof, the proposed condominium declaration and by-laws must be submitted to and approved by Agent and the title company insuring title to the Property to Lenders, which approval shall be not unreasonably conditioned, delayed or withheld. Agent agrees to join in any condominium declaration, by-laws and other documents required for the development of the Improvements upon the approval of the same by Agent to evidence the consent of Lenders thereto or approval thereof and to subordinate the lien of this Deed of Trust to the effect of such condominium regime. Notwithstanding anything contained herein to the contrary, in no event shall the approval by Agent of any such condominium regime constitute an authorization to Trustor to offer condominium units for sale to third-party purchasers, unless otherwise expressly agreed to by Agent and Required Lenders. Once such condominium regime has been established by Trustor, it shall constitute a Default hereunder should the condominium regime be thereafter terminated during the term of the Loan without the prior written consent of Agent and Lenders. During any period in which the Property is subject to one or more condominium regimes, Trustor hereby further covenants and agrees as follows:

(i) Trustor shall pay all common expense assessments and all other fees and assessments to the extent required by the condominium documents, or any resolutions adopted pursuant thereto. The failure of Trustor to make any such payment or to exhibit such receipts or evidence within any applicable cure and/or grace period shall constitute a Default hereunder.

(ii) During the existence of any Default, Agent shall have all the rights and privileges which the owner of a unit has by virtue of the condominium documents and applicable law as though Agent were in fact a unit owner, including, without limiting the generality of the foregoing, all voting rights accruing to Trustor under the terms of the condominium documents, it being understood that during the existence of any Default by Trustor, Agent may vote in the place and stead of Trustor. During the existence of any Default, Agent may exercise any and all of said rights hereinabove referred to, and Trustor hereby nominates and appoints Agent so long as this Deed of Trust remains in effect and while any such Default shall continue as Trustor's irrevocable proxy to vote and, as Trustor's agent, to act with respect to all of said rights. Written notice of Default from Agent to the condominium association shall be deemed conclusive as to the existence of such Default and as to Agent's rights and privileges under this paragraph, including all voting rights accruing to Trustor under the terms of the condominium documents and applicable law. The provisions of this paragraph shall in no event render Agent or Lenders liable for any common charges or assessments required by the condominium documents, nor shall they cause, in and of themselves, Agent or Lenders to be deemed a declarant.

(iii) Trustor shall not, except after notice to Agent and with the prior written consent of Agent, which consent shall not be unreasonably withheld, conditioned or delayed, and which shall be deemed granted where Trustor is required so to act by law: (1) vote for or consent to any modification of, amendment to or relaxation in the enforcement of any material provision of the condominium documents; (2) in the event of damage to or destruction of the Property, vote in opposition to a motion to repair, restore, or rebuild; (3) partition or subdivide any unit; (4) consent to the termination of the condominium regime, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain; (5) consent to any

amendment to any material provision of the condominium documents, except as required for compliance with any applicable law or requirements of a governmental authority or to correct manifest error; or (6) exercise the special declarant rights to make the condominium subject to a master association or merge or consolidate the condominium with any other condominium.

(iv) Trustor shall fully and faithfully observe, keep and perform, in a commercially reasonable and acceptable manner, each and every requirement, condition, covenant, agreement and provisions under the condominium documents, the by-laws of the condominium association, rules of the condominium and applicable law on the part of Trustor to be observed, kept and performed. Trustor shall promptly deliver to Agent a copy of each and every notice of Default received by Trustor with respect to any obligation of Trustor under the provisions of the condominium documents, the by-laws or the rules of the condominium association or applicable law.

(u) Transfer of the Property; Restrictive Covenants, Zoning, etc. Without the prior written consent of Agent and Required Lenders, Trustor will not (i) transfer, or contract to transfer, all or any part of the Property or any legal or beneficial interest therein (except for transfers expressly permitted by the terms of Section 4.1(f) below), or (ii) initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Property. Trustor will (i) promptly perform and observe, and cause to be performed and observed, in all material respects, all of the terms and conditions of all agreements affecting the Property, and (ii) do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

Section 2.2. Performance by Agent on Trustor's Behalf. Trustor agrees that, if Trustor fails to perform any act or to take any action which under any Loan Document Trustor is required to perform or take, or to pay any money which under any Loan Document Trustor is required to pay and such failure continues beyond any applicable grace or cure period to which Trustor is entitled, and whether or not the failure then constitutes a Default hereunder or thereunder, and whether or not there has occurred any Default or Defaults hereunder or the Secured Indebtedness has been accelerated, Agent, in Trustor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Agent and any money so paid by Agent shall be a demand obligation owing by Trustor to Agent (which obligation Trustor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Agent, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Agent and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Agent shall waive or cure any Default or waive any right, remedy or recourse of Agent. Any such payment may be made by Agent in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Trustor to Agent pursuant to this Deed of Trust shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Notes for interest on principal owed on the Notes but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Agent on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Agent hereunder and the time when paid shall be fully established by the certificate of Agent or any of Agent's officers or agents.

Section 2.3. Absence of Obligations of Agent with Respect to Property. Notwithstanding anything in this Deed of Trust to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is

composed of Trustor's rights, title and interests therein but not Trustor's obligations, duties or liabilities pertaining thereto, (ii) Agent neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, prior to obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Agent may, at any time prior to the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Agent's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Agent shall have no obligations, duties or liabilities prior to acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Agent elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Trustor hereby authorizes Agent at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements with or without signature of Trustor as authorized by applicable law, required by Agent to establish or maintain the validity, perfection and priority of the security interests granted in this Deed of Trust. For purposes of such filings, Trustor agrees to furnish any information requested by Agent promptly upon request by Agent. Trustor also ratifies its authorization for Agent to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Agent and any officer or agent of Agent, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in Trustor's own name to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Trustor's authorization above is not sufficient. To the extent permitted by law, Trustor hereby ratifies all acts said attorneys-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof in connection with this Section 2.4. This power of attorney is a power coupled with an interest and shall be irrevocable.

## ARTICLE 3

### Assignment of Rents and Leases

Section 3.1. Assignment of Rents and Leases. Trustor hereby unconditionally, absolutely and presently grants, transfers, conveys and assigns to Agent for the benefit of Holder all Rents (hereinafter defined) and all of Trustor's rights in and under all Leases (hereinafter defined). So long as no Default has occurred and is continuing, Trustor shall continue to collect, but not prior to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Agent and to otherwise deal with all Leases as permitted by this Deed of Trust. Each month, provided no Default has occurred, Trustor may retain such Rents as were collected that month and use and enjoy the same; provided, however, that all Rents collected by Trustor shall be applied solely to the ordinary and necessary expenses of owning and operating the Property before being used for any other purpose. Upon occurrence of an Event of Default, and in accordance with UCA 57-26-101 et al, and following notification to the tenants under the Leases by Agent or Trustee that Rents are to be paid to Agent, all Rents shall be paid directly to Agent and not through Trustor, all without the necessity of any further action by Agent, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. A demand by Agent on any tenant for the payment of Rents shall be sufficient to warrant such tenant to make future payments of Rents to Agent without the necessity of further consent by Trustor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Agent has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Agent to the tenants. Any such payments to Agent shall constitute payments to Trustor under the Leases, and Trustor

hereby irrevocably appoints Agent as its attorney-in-fact to do all things, after a Default, which Trustor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Agent, all in such manner as may be determined by Agent, (ii) leasing, in the name of Trustor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services; provided, however that Agent shall not exercise such rights as attorney-in-fact until there occurs a Default under the Notes or this Deed of Trust. The curing of such Default, unless other Defaults also then exist, shall entitle Trustor to recover its aforesaid license to do any such things which Trustor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Agent to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Agent for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the earlier to occur of the payment of all of the Secured Indebtedness and release of this Deed of Trust. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Trustor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein (other than a fee simple interest), and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Trustor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Trustor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Trustor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property. In addition to the general assignment provided for in this Section, Mortgagor has executed the Assignment of Leases as security for the Secured Indebtedness, to which reference is hereby made for the nature and extent of the security afforded thereby, and for the rights of Agent and Holder with respect to such security.

**Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents.** Trustor covenants, represents and warrants that: (a) Trustor will not enter into any Lease after the date hereof, except for residential leases on Trustor's form residential lease in accordance with the terms of the Loan Agreement and otherwise to the extent expressly permitted by the terms of the Loan Agreement or as otherwise agreed to by Agent; (b) Trustor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and has the authority to assign them; (c) to Trustor's knowledge, all Leases are valid and enforceable, except as the enforceability thereof may be limited by Debtor Relief Laws and except as the availability of certain remedies may be limited by general principles of equity, and in full force and effect, and are unmodified except as stated therein; (d) except as otherwise expressly disclosed by Trustor to Agent in writing, neither Trustor nor, to Trustor's knowledge, any tenant in the Property is in default under its Lease (and, to Trustor's knowledge, no event has occurred

which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (e) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (f) except as stated in the Leases, no Rents have been waived, released, discounted, set off or compromised; (g) except as stated in the Leases, Trustor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (h) Trustor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (i) Trustor will not, without the prior written consent of Agent, except in the ordinary course of business with respect to residential tenants or except as otherwise expressly set forth in a written lease approved or deemed approved by Holder, waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease; (j) Trustor shall give prompt notice to Agent, as soon as Trustor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Trustor shall defend, at Trustor's expense, any proceeding pertaining to any Lease, including, if Agent so requests, any such proceeding to which Agent is a party; (k) Trustor shall as often as reasonably requested by Agent, within thirty (30) days of each request, deliver to Holder a complete rent roll of the Property in such detail as Holder may reasonably require and, to the extent available to Trustor, financial statements of the tenants, subtenants and guarantors under the Leases (exclusive of residential leases); (l) within thirty (30) days after any request by Agent, Trustor shall notify all tenants under existing Leases, and agrees to thereafter notify all tenants under future Leases, that (1) in accordance with UCA 57-26-104 (Utah Uniform Assignment of Rents Act), Trustor has assigned all Rents to Agent pursuant to the security interest granted to it hereunder, and (2) upon Notice from Agent, the tenant shall pay all unpaid Rents directly to Agent; (m) there shall be no merger of the leasehold estates created by the Leases, with the fee estate of the Land without the prior written consent of Holder; and (n) Holder may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Deed of Trust to any Lease, without joinder or consent of, or notice to, Trustor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Deed of Trust to any Lease.

Section 3.3. No Liability of Agent. Agent's acceptance of this assignment shall not be deemed to constitute Agent a "mortgagee in possession," nor obligate Agent to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Trustor by any tenant and not as such delivered to and accepted by Agent. Agent shall not be liable for any injury or damage to person or property in or about the Property, except for any injury or damage due to Agent's gross negligence or willful misconduct, or for Agent's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents, nor enforcement of Agent's rights regarding Leases and Rents (including collection of Rents) nor Agent's consent to or approval of any Lease (nor all of the same), shall render Agent liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Agent seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Agent neither has nor

assumes any obligations as lessor or landlord with respect to any Lease. The rights of Agent under this Article 3 shall be cumulative of all other rights of Agent under the Loan Documents or otherwise.

## ARTICLE 4

### **Default**

Section 4.1. **Events of Default.** The occurrence of any one of the following shall be a default under this Deed of Trust ("default" or "Default"):

(a) **Failure to Pay Indebtedness.** Any of the Secured Indebtedness is not paid within ten (10) days after the date when due, regardless of how it has become due, but excluding, however, from the foregoing grace period, the failure of Trustor to pay all amounts due on the Maturity Date (as defined in the Loan Agreement) or any extension thereto.

(b) **Nonperformance of Covenants.** Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept, and such failure remains uncured for more than thirty (30) days after written notice thereof shall have been sent by Agent or Holder to Trustor, unless (i) the nature of the failure is such that it cannot be cured within the thirty (30) day period, (ii) Trustor institutes corrective action within the thirty (30) day period, and (iii) Trustor diligently pursues such action until the failure is remedied and completes the cure thereof within a period of an additional thirty (30) days.

(c) **Representations.** Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Agent or Holder by or on behalf of Trustor or Guarantor in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made, and such statement, representation or warranty is not made true and correct (as of the time such corrective action is taken) within the applicable grace period (if any) provided for in such Loan Document, and if no such grace period is provided, then within the time periods required by Section 4.1(b) above.

(D) **Transfer of the Property.** Without the prior written consent of Agent and Required Lenders, any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) transfers of interests in Trustor expressly permitted by the terms of subsection (h) below; (ii) in connection with the sale or transfer of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Trustor, having a value equal to or greater than the replaced items when new; (iii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Deed of Trust or of any other Loan Document; and (iv) with the consent of Agent (such consent not to be unreasonably withheld, conditioned or delayed), the grant of customary easement agreements and other documents required in the ordinary course for the development of the Property or the construction of Improvements thereon as contemplated by the terms of the Loan Agreement. Agent and Required Lenders may, in their sole discretion, waive a default under this paragraph, but they shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Agent and Required Lenders may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Agent and Required Lenders in their sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Agent and

Required Lenders may require, a principal paydown on the Notes, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Notes, and any other modification of the Loan Documents which Agent and Required Lenders may require. NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SWAP CONTRACTS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED, IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED IN CONTRAVENTION OF THE TERMS OF THIS DEED OF TRUST.

(e) Transfer of Ownership in Trustor, etc. Except as otherwise expressly permitted by the terms of the Loan Agreement, the sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any direct or indirect interest in Trustor, without the prior written consent of Agent.

(f) Grant of Easement, Etc. Trustor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless (i) such action is expressly permitted by the terms hereof or any of the other Loan Documents or does not affect the Property, and (ii) Trustor has obtained the prior written consent of Agent and Required Lenders (except to the extent that Required Lenders' consent is not required pursuant to Section 4.1(f) above).

(g) Abandonment. Trustor abandons any of the Property for a period in excess of thirty (30) consecutive days.

(h) Default Under Other Lien. Subject to Trustor's right to contest and insure or bond over, a default or event of default (beyond any applicable grace and/or cure period provided therefore) occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not Agent has consented, and without hereby implying Agent's consent, to any such lien, security interest or assignment not created hereunder), or the holder of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(i) Condemnation. Without the prior, express written consent of Agent, (i) any final, non-appealable order of any judicial or governmental authority shall be issued, whether through a proceeding in condemnation, the power of eminent domain or otherwise, requiring the demolition of any building or structure comprising a material part of the Premises, or (ii) there occurs any transfer or taking, whether by condemnation, the power of eminent domain, any deed-in-lieu thereof, or otherwise, of a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(j) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Utah and/or the state of incorporation or organization, if different, of Trustor, Guarantor or any other Person obligated to pay any part of the Secured Indebtedness and such failure is not cured within thirty (30) days after such change in status becomes known to the affected party, or the division of Trustor into two or more entities or the creation or reorganization of Trustor into one or more series, whether or not permitted by applicable law.

(k) Legal Requirement. Trustor shall fail to comply with a material term of, or shall default under, any Legal Requirement and such failure to comply or default shall continue beyond any applicable grace or cure period.

(l) Enforceability; Priority. Any Loan Document shall for any reason without Agent's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in material part, or the validity or enforceability thereof, in whole or in material part, shall be challenged or denied by any party thereto other than Agent; or the liens, mortgages or security interests of Agent in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Trustor or any person obligated to pay any part of the Secured Indebtedness.

(m) Condominium Regime. Trustor fails to timely perform or comply with any of the terms and conditions set forth in Section 2.1(t), or any condominium regime covering the Property or any portion thereof is in any way modified without the prior written consent of Agent or is terminated or cancelled without the prior written consent of Agent and Required Lenders.

Section 4.2 Notice and Cure. If any provision of this Deed of Trust or any other Loan Document provides for Agent to give to Trustor any notice regarding a default or incipient default, then if Agent shall fail to give such notice to Trustor as provided, the sole and exclusive remedy of Trustor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Notes and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Trustor shall have no right to damages or any other type of relief not herein specifically set out against Agent, all of which damages or other relief are hereby waived by Trustor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

## ARTICLE 5

### Remedies

Section 5.1. Certain Remedies. If a Default shall occur, Agent may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Agent may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and may terminate any and all Swap Contracts. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Contracts shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Trustor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (e) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Trustor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Agent under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Agent may: (1) collect and/or sue for the Rents in Agent's own name, give receipts and releases therefor, and after deducting all expenses of collection, including reasonable attorneys' fees and expenses, apply the net proceeds thereof to the Secured Indebtedness in such manner and order as Agent may elect and/or to the operation and management of the Property, including the

payment of management, brokerage and attorney's fees and expenses; and (2) require Trustor to transfer all security deposits and records thereof to Agent together with original counterparts of the Leases.

(c) Foreclosure. Trustee, if and as directed by Agent, shall have all of the rights and may exercise all of the powers set forth in applicable Law of the State of Utah, including those powers set forth in UCA Section 57-1-29 to 57-1-39 or any successor provision of Law. Trustee may sell the Property in its entirety or in parcels, and by one or by several sales, as deemed appropriate by Trustee in its sole and absolute discretion (but subject to Trustor's statutory right under UCA Section 57-1-23 to direct the order in which the property, if consisting of several known lots or parcels, shall be sold). Trustee shall receive and apply the proceeds from the sale of the Property, or any portion thereof, in accordance with UCA Section 57-1-29 to 57-1-39 or any successor provision of Law. Before any foreclosure sale, Agent or Trustee shall give such notice of default and election to sell as may be required by Law. After the lapse of such time as may then be required by Law following the recordation of such notice of default, and notice of sale having been given as then required by Law, Trustee or the attorney for Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Agent shall have any obligation to make demand on Trustor before any foreclosure sale. From time to time in accordance with then-applicable Law, Trustee may, and in any event at Agent's request shall, postpone any foreclosure sale by public announcement at the time and place noticed for that sale. At any foreclosure sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent permitted by applicable Law), payable at the time of sale or upon such other terms as described in the notice of sale. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, expressed or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any foreclosure sale, shall be conclusive and *prima facie* evidence of their truthfulness. Any such deed shall be conclusive against all Persons as to the facts recited therein. Any Person, including Trustee or Agent, may purchase at such sale. Upon any sale made under or by virtue of this Section 5.1(c), whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Agent may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with UCA Section 57-1-28(1)(b) or other applicable Law. In the event of a successful credit bid, Agent shall make settlement for the purchase price by crediting upon the obligations of Trustor secured by this Deed of Trust such credit bid amount. Agent, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable Laws.

(d) Judicial Action. Agent and Trustee, if and as directed by Agent, shall have the right to bring an action in any court of competent jurisdiction for foreclosure of this Deed of Trust as a mortgage and a deficiency judgment as provided by Law, or for specific enforcement of any of the covenants or agreements of this Deed of Trust.

(e) Uniform Commercial Code. Without limitation of Agent's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Agent may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Utah Uniform Commercial Code, as in effect from time to time (or under the Uniform Commercial Code in force, from time to time, in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Agent may enter upon Trustor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Agent may require Trustor to assemble the Collateral and make it available at a place Agent designates which is mutually convenient to allow Agent to take possession or dispose of the Collateral; (3) written notice mailed to Trustor as provided herein at least five (5) days prior to the date of public sale of the Collateral

or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; provided that, if Agent fails to comply with this clause (3) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Utah Uniform Commercial Code, as in effect from time to time (or under the Uniform Commercial Code, in force from time to time, in any other state to the extent the same is applicable law); (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under the power of sale as provided in paragraph (c) above in this Section 5.1; (5) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Agent, be sold as a whole; (6) it shall not be necessary that Agent take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under Section 5.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Agent; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any Default, or as to Agent having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Agent, shall be taken as prima facie evidence of the truth of the facts so stated and recited; (9) Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Agent, including the sending of notices and the conduct of the sale, but in the name and on behalf of Agent; (10) Agent shall comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Collateral, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (11) Agent may sell the Collateral without giving any warranties as to the Collateral, and specifically disclaim all warranties including, without limitation, warranties relating to title, possession, quiet enjoyment and the like, and all warranties of quality, merchantability and fitness for a specific purpose, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (12) Trustor acknowledges that a private sale of the Collateral may result in less proceeds than a public sale; and (13) Trustor acknowledges that the Collateral may be sold at a loss to Trustor, and that, in such event, Agent shall have no liability or responsibility to Trustor for such loss.

It shall be deemed commercially reasonable for Trustee to dispose of the personality without giving any warranties as to the personality and specifically disclaiming all disposition warranties. Alternatively, the Agent may choose to dispose of some or all of the Property, in any combination consisting of both personality and real property, in one sale to be held in accordance with the Law and procedures applicable to real property, as permitted by Article 9a of the Uniform Commercial Code. Trustor agrees that such a sale of personality together with real property constitutes a commercially reasonable sale of the personality. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9a of the Utah Uniform Commercial Code, Agent may sell any shares of corporate stock evidencing water rights in accordance with UCA Section 57-1-30 or other applicable Law.

(e) Lawsuits. Agent may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(f) Entry on Property. Trustor specifically agrees that if an Event of Default shall have occurred and be continuing, Agent, in accordance with UCA Section 57-26-107 and upon application to a court of competent jurisdiction, as a matter of strict right without notice and without regard to occupancy or value of any security for the debt secured hereby or the solvency of any party bound for its payment, without any showing of fraud or mismanagement on the part of Trustor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver to take possession of, and to operate all or any part of the Property and to collect and apply the Rents, whether such receivership be incidental to a proposed sale of the Property or otherwise. The receiver shall have all of the rights, powers and protections granted to the receiver or Agent herein, or otherwise permitted under the laws of the State of Utah. Trustor will pay to the receiver or Agent upon demand all reasonable, out-of-pocket expenses, including receiver's fees, reasonable, actual attorneys' fees, costs and compensation, incurred pursuant to the provisions of this paragraph, and all such expenses shall be secured by this Deed of Trust. In addition, to the extent permitted by Law, and with or without the appointment of a receiver, or an application therefor, Agent may (a) enter upon, and take possession of (and Trustor shall surrender actual possession of), the Property or any part thereof, without notice to Trustor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude Trustor and its agents and employees therefrom. In connection with any action taken by Agent pursuant to this Section, Agent shall not be liable for any loss sustained by Trustor resulting from any failure to let the Property or any part thereof, or from any act or omission of Agent in managing the Property unless such loss is caused by the gross negligence or willful misconduct and bad faith of Agent, nor shall Agent be obligated to perform or discharge any obligation, duty or liability of Trustor arising under any lease or other agreement relating to the Property or arising under any Permitted Encumbrance or otherwise arising.

(g) Receiver. Agent shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Trustor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, agrees not to oppose any application therefor by Agent, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Agent to application of Rents as provided in this Deed of Trust. Nothing herein is to be construed to deprive Agent of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Agent in connection with any such receivership, plus interest thereon at the Default Rate set forth in the Loan Agreement, shall be a demand obligation (which obligation Trustor hereby promises to pay) owing by Trustor to Agent pursuant to this Deed of Trust.

(h) Termination of Commitment to Lend. Agent may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Trustor.

(i) Deficiency. Trustor agrees to pay any deficiency arising from any cause, to which Agent may be entitled after applications of the proceeds of any sale, and Agent may commence suit to collect such deficiency in accordance with UCA Section 57-1-32 or other applicable Law.

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

(k) Marshaling of Assets. Trustor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshaling of assets by Trustee or Agent, or to require Trustee or Agent, upon a foreclosure, to first resort to the sale of any portion of the Property which might have been retained by Trustor before foreclosing upon and selling any other portion as may be conveyed by Trustor subject to this Deed of Trust.

(l) Request for Notice. Agent hereby requests, pursuant to UCA 57-1-26(3), a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address specified at the end of this Deed of Trust.

(m) Other Rights and Remedies. Agent may exercise any and all other rights and remedies which Agent may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Proceeds of Foreclosure. The proceeds of any sale held by Trustee or Agent or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied in accordance with the requirements of applicable laws and to the extent consistent therewith, FIRST, to the payment of all necessary out-of-pocket costs and expenses incident to such foreclosure sale, including but not limited to all reasonable attorneys' fees and legal expenses, advertising costs, auctioneer's fees, costs of title rundowns and lien searches, inspection fees, appraisal costs, fees for professional services, environmental assessment and remediation fees, all court costs and charges of every character, and a reasonable fee to Trustee acting under the provisions of paragraph (c) of Section 5.1 hereof if foreclosed by power of sale as provided in said paragraph, and to the payment of the other Secured Indebtedness, including specifically without limitation the principal, accrued interest and reasonable attorneys' fees due and unpaid on the Notes and the amounts due and unpaid and owed to Agent under this Deed of Trust and the amounts due and unpaid and owed to Agent (or its Affiliates) under any Swap Contracts, the order and manner of application to the items in this clause FIRST to be in Agent's sole discretion; and SECOND, the remainder, if any there shall be, shall be paid to Trustor, or to Trustor's heirs, devisees, representatives, successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Agent is uncertain which person or persons are so entitled, Agent may interplead such remainder in any court of competent jurisdiction, and the amount of any reasonable attorneys' fees, court costs and expenses incurred in such action shall be a part of the Secured Indebtedness and shall be reimbursable (without limitation) from such remainder.

Section 5.3. Agent as Purchaser. Agent shall have the right to become the purchaser at any sale held by Trustee or substitute or successor or by any receiver or public officer or at any public sale, and Agent shall have the right to credit upon the amount of Agent's successful bid, to the extent necessary to satisfy such bid, all or any part of the Secured Indebtedness in such manner and order as Agent may elect.

Section 5.4. Foreclosure as to Matured Debt. Upon the occurrence of a Default, Agent shall have the right to proceed with foreclosure (judicial or nonjudicial) of the liens and security interests hereunder without declaring the entire Secured Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Secured Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Secured Indebtedness, but as to such unmatured part this Deed of Trust shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 5.2 hereof except that the amount paid under clause FIRST thereof shall be only the matured portion of the Secured Indebtedness and any proceeds of such sale in excess of those provided for in clause FIRST (modified as provided above) shall be applied to the prepayment (without penalty) of any other Secured Indebtedness in such manner and order and to such extent as Agent deems advisable, and the remainder, if any, shall be applied as provided in clause

SECOND of Section 5.2 hereof. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Secured Indebtedness.

**Section 5.5. Remedies Cumulative.** All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Trustee and Agent shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Secured Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

**Section 5.6. Discretion as to Security.** Agent may resort to any security given by this Deed of Trust or to any other security now existing or hereafter given to secure the payment of the Secured Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Agent in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Deed of Trust.

**Section 5.7. Trustor's Waiver of Certain Rights.** To the full extent Trustor may do so, Trustor agrees that Trustor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Trustor, for Trustor, Trustor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole of the Secured Indebtedness, notice of election to mature or declare due the whole of the Secured Indebtedness and all rights to a marshaling of assets of Trustor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Trustor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Agent under the terms of this Deed of Trust to a sale of the Property for the collection of the Secured Indebtedness without any prior or different resort for collection, or the right of Agent under the terms of this Deed of Trust to the payment of the Secured Indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatsoever. Trustor waives any right or remedy which Trustor may have or be able to assert pursuant to any provision of Utah law pertaining to the rights and remedies of sureties, including but not limited to, the rights, protections and benefits afforded to a borrower under UCA 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits. If any law referred to in this Section and now in force, of which Trustor or Trustor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

**Section 5.8. Delivery of Possession After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale, Trustor or Trustor's heirs, devisees, representatives, or successors as owners of the Property are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of purchaser, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have

the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. Subject to the terms of any non-disturbance and attornment agreements executed by Agent with tenants or subtenants occupying space within the Property, after such foreclosure, any Leases to tenants or subtenants that are subject to this Deed of Trust (either by their date, their express terms, or by agreement of the tenant or subtenant) shall, at the sole option of Agent or any purchaser at such sale, either (i) continue in full force and effect, and the tenant(s) or subtenant(s) thereunder will, upon request, attorn to and acknowledge in writing to the purchaser or purchasers at such sale or sales as landlord thereunder, or (ii) upon notice to such effect from Agent, Trustee or any purchaser or purchasers, terminate within thirty (30) days from the date of sale. In the event the tenant fails to surrender possession of the Property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the Property (such as an action for forcible detainer) in any court having jurisdiction.

## ARTICLE 6

### Miscellaneous

Section 6.1. Scope of Deed of Trust. This Deed of Trust is a deed of trust of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Deed of Trust shall be effective as a financing statement (fixture filing) and it is hereby recited (to the extent that such recitation is required by UCA Section 70A-9a-502 (or any replacement statute) because a portion of the Property may constitute fixtures) that this Deed of Trust is to be filed in the office where a mortgage on the real property would be recorded, which is the office of the Recorder of Salt Lake County, Utah. Trustor is the record owner of the Property. This Deed of Trust shall also be effective as a financing statement covering accounts and general intangibles and any other Property under the Utah Uniform Commercial Code, as in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other jurisdiction where the Property is situated and may be filed in any other appropriate filing or recording office. The mailing address of Trustor and the Agent are set forth at the end of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Deed of Trust, during the existence of any Default hereunder, Agent may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Agent directly.

Section 6.4. Waiver by Agent. Agent may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Trustor with any covenant herein made by Trustor to the extent and in the manner specified in such writing; (b) consent to Trustor's doing any act which hereunder Trustor is prohibited from doing, or to Trustor's failing to do any act which hereunder Trustor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Deed of Trust, without the joinder of Trustee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Agent or Trustee hereunder except to the extent specifically agreed to by Agent in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Agent hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Agent including, but not limited to, any renewal, extension or modification which Agent may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Agent may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Agent shall not release or impair the lien, security interest or other security rights of Agent hereunder or affect the liability of Trustor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Agent's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Agent. Agent may waive any Default without waiving any other prior or subsequent Default. Agent may remedy any Default without waiving the Default remedied. Neither failure by Agent to exercise, nor delay by Agent in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any Default shall be construed as a waiver of such Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Agent of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Trustor therefrom shall in any event be effective unless the same shall be in writing and signed by Agent and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Trustor in any case shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Agent in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Agent of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a Default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Trustor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Trustor, Agent may, without notice to Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and to the Secured Indebtedness in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Agent, and no extension of the time for the payment of the Secured Indebtedness given by Agent shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Trustor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Nothing in this Section or elsewhere in this Deed of Trust shall be construed to imply Agent's consent to any transfer of the Property.

Section 6.8. Place of Payment; Forum; Waiver of Jury Trial. All Secured Indebtedness which may be owing hereunder at any time by Trustor shall be payable at the place designated in the Notes (or if no such designation is made, at the address of Agent indicated at the end of this Deed of Trust). Trustor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any state or local court located in the State of Utah or any United States

federal court, sitting in Utah, and to the non-exclusive jurisdiction of any state or United States federal court sitting in any other state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Deed of Trust or the Secured Indebtedness. Trustor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Trustor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Trustor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state or local court in Utah, or any United States federal court, sitting in the State of Utah may be made by certified or registered mail, return receipt requested, directed to Trustor at its address stated at the end of this Deed of Trust, or at a subsequent address of Trustor of which Agent received actual notice from Trustor in accordance with this Deed of Trust, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Agent to serve process in any manner permitted by law or limit the right of Agent to bring proceedings against Trustor in any other court or jurisdiction. TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT.

Section 6.9. Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Notes are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Agent at Trustor's request, and Agent shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Deed of Trust shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Agent is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Agent, Trustor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the Loan evidenced by the Notes or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Agent shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the Secured Indebtedness. Agent may foreclose under this Deed of Trust or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Deed of Trust.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The Loan evidenced by the Notes is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Trustor and Agent and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Agent and Trustor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Deed of

Trust, the Notes or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the “Maximum Amount”). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Agent shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Trustor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Notes or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Agent does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Agent shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term “applicable law” shall mean the laws of the State of Utah or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Substitute Trustee. Trustee may resign by an instrument in writing addressed to Agent, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Agent. In case of the death, resignation, removal, or disqualification of Trustee, or if for any reason Agent shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Agent shall have the right and is hereby authorized and empowered to appoint a successor trustee(s), or a substitute trustee(s), without other formality than appointment and designation in writing, meeting the requirements of UCA Section 55-1-22(2), executed by Agent and the recordation of the same among the appropriate land records and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Secured Indebtedness has been paid in full, or until the Property is fully and finally sold hereunder. If Agent is a corporation or association and such appointment is executed on its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute Trustee(s) and he or she shall thereupon succeed to, and shall hold, possess and execute, all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to “Trustee” shall be deemed to refer to Trustee (including any successor(s) or substitute(s) appointed and designated as herein provided) from time to time acting hereunder.

Section 6.13. No Liability of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee’s negligence), except for Trustee’s gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him, her or it hereunder, believed by him, her or it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him, her or it hereunder. Trustor hereby ratifies and confirms any and

all acts which the herein named Trustee or his, her or its successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Trustor will reimburse Trustee for, and save him, her or it harmless against, any and all liability and expenses which may be incurred by him, her or it in the performance of his, her or its duties. The foregoing indemnity shall not terminate upon discharge of the Secured Indebtedness or foreclosure, or release or other termination, of this Deed of Trust.

Section 6.14. Acceptance by Trustee. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

Section 6.15. Trustee's Fees and Expenses. In no event shall the Trustor be required to pay to Trustee any fees or compensation in excess of amounts permitted by UCA 57-1-21.5.

Section 6.16. Releases.

(a) Release of Deed of Trust. If all of the Secured Indebtedness shall be indefeasibly paid as the same becomes due and payable and all the covenants, warranties, undertakings and agreements made in this Deed of Trust are kept and performed (or otherwise waived by Agent), and all Swap Contracts and all other obligations, if any, of Agent for further advances have been terminated, then, and in that event only, all rights under this Deed of Trust shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Agent in due form at Trustor's cost. Without limitation, all provisions herein for indemnity of Agent or Trustee shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Contracts and any foreclosure, release or termination of this Deed of Trust.

(b) Partial Releases. Agent may, regardless of consideration, release any part of the Property from the lien of this Deed of Trust without, in any manner, affecting or impairing the lien or priority of this Deed of Trust as to the remainder of the Property.

(c) Release Fee. If permitted by applicable law Trustor shall pay to Agent, at the time of each partial or complete release of the lien of this Deed of Trust, a release fee in the amount of Twenty-Five and No/100 Dollars (\$25.00) if the release instrument is delivered to Agent for execution or Fifty and No/100 Dollars (\$50.00), if Agent is required to prepare the release instrument. In addition, Trustor shall pay to Agent a fee in the amount of Twenty-Five and No/100 Dollars (\$25.00) for each other document or instrument which Trustor requires Trustee to execute.

Section 6.15. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by certified United States mail, return receipt requested, postage prepaid, addressed to the party to whom directed at the addresses specified at the end of this Deed of Trust (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.16. Invalidity of Certain Provisions. A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Deed of Trust to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.17. Gender; Titles; Construction. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Deed of Trust and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Deed of Trust shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.18. Reporting Compliance. Trustor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Notes which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Agent to furnish Agent with evidence of such compliance.

Section 6.19. Agent's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Agent is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Agent, and (b) no approval or consent of Agent shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Agent.

Section 6.20. Trustor. Unless the context clearly indicates otherwise, as used in this Deed of Trust, "Trustor" means the Trustors named in Section 1.1 hereof and each of them. The obligations of Trustor hereunder shall be joint and several. All promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Deed of Trust are made by and shall be binding upon each and every such undersigned Trustor, jointly and severally, and the Agent and/or Lenders may pursue any Trustor hereunder without being required (i) to pursue any other Trustor hereunder or (ii) pursue rights and remedies under this Deed of Trust and/or applicable law with respect to the Property or any other Loan Documents. If any Trustor, or any signatory who signs on behalf of any Trustor, is a corporation, partnership or other legal entity, Trustor and any such signatory, and the person or persons signing for it, represent and warrant to Agent that this instrument is executed, acknowledged and delivered by Trustor's duly authorized representatives. If Trustor is an individual, no power of attorney granted by Trustor herein shall terminate on Trustor's disability.

Section 6.21. Execution; Recording. This Deed of Trust may be executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Deed of Trust, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Deed of Trust shall be deemed to be the date reflected on the first page hereof. Trustor will cause this Deed of Trust and all amendments and

supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Trustee or Agent shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.22. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Trustor, and the heirs, devisees, representatives, successors and assigns of Trustor, and shall inure to the benefit of Trustee and Agent and shall constitute covenants running with the Land. All references in this Deed of Trust to Trustor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Trustor.

Section 6.23. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.24. No Partnership, Etc.. The relationship between Agent and Trustor is solely that of lender and borrower. Agent has no fiduciary or other special relationship with Trustor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Trustor and Agent or in any way make Agent a co-principal with Trustor with reference to the Property. All agreed contractual duties between or among Agent, Trustor and Trustee are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.25. Applicable Law. THIS DEED OF TRUST, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE OF UTAH (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF UTAH ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.26. Execution Under Seal. Trustor agrees that this instrument is executed under seal. If Trustor is a corporation, the designation ("SEAL") on this instrument shall be as effective as the affixing of Trustor's corporate seal physically to this instrument.

Section 6.27. Obligations Secured. This Deed of Trust shall constitute further security for any and all present and future loans and advances made by Agent and/or Lenders to Trustor, as well as for any and all present and future obligations, indebtedness and liabilities of Trustor to Agent and/or Lenders now or hereafter incurred, due or owing under the provisions hereof or of the Notes, or any other document held as security for the indebtedness evidenced by the Notes, and for all interest thereon, and for all obligations and commercially reasonable costs or expenses assumed or incurred by Agent and/or Lenders in connection with any such obligation, debt or liability. In addition, this Deed of Trust shall secure all advances Agent and/or Lenders may make or become obligated to make with respect to the Property (1) for the payment of taxes, assessments, maintenance charges, and insurance premiums, (2) for the protection of the lien of this Deed of Trust, the other security hereby given and/or the Property, (3) due to the occurrence of a Default, or the occurrence of an event which, with the giving of notice or the passage of time without cure, or both, would constitute a Default and (4) to enable the completion of the construction of certain improvements upon the Land as described in the Loan Documents, and all such

advances referred to in this Section 6.28 shall bear interest at the “Default Rate” set forth in the Loan Agreement and shall be deemed obligatory when made.

Section 6.28. Additional State of Utah Provisions.

(a) Construction Mortgage. This Deed of Trust constitutes a “Construction Mortgage” within the meaning of Utah Code Annotated Section 70A-9a-334(8) or any successor statute. The proceeds of the loan secured by this Deed of Trust are to be used by Trustor in part for the purpose of funding the construction and development of the Property described herein and are to be disbursed in accordance with the provisions of the Loan Documents.

(b) Final Expression. Pursuant to UCA Section 25-5-4, this written agreement is the final expression of the agreement between Trustor and Agent and this written agreement may not be contradicted by evidence of any alleged oral agreement.

Section 6.29. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Trustor and Agent with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Trustor and Agent with respect to the matters addressed in the Loan Documents. Trustor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Agent to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.30. NOTICE OF SALE REQUEST. IF THE PROPERTY, OR ANY PART THEREOF, IS ENCUMBERED BY A SUPERIOR MORTGAGE(S) OR DEED(S) OF TRUST, THE HOLDER HEREBY REQUESTS NOTICE OF ANY FORECLOSURE OF THE PROPERTY, OR ANY PART THEREOF.

[Signature contained on following page]

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be executed under seal as of the date first written above.

The address of Trustor is:

c/o The Widewaters Group, Inc.  
5845 Widewaters Parkway, Suite 100  
East Syracuse, NY 13057  
Attn: Chief Financial Officer

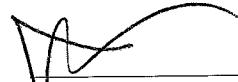
with a copy to:

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Timothy M. Fitzgerald, Esq.

**TRUSTOR:**

500 EAST MULTIFAMILY OWNERSHIP, LLC,  
a Delaware limited liability company

By:



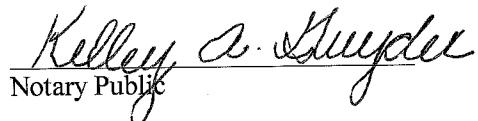
Joseph R. Scuderi  
Manager

(SEAL)

STATE OF NEW YORK, CITY/COUNTY OF ONONDAGA, TO WIT:

I HEREBY CERTIFY, that on this 30th day of March, 2022, before me, the undersigned Notary Public of said State, personally appeared Joseph R. Scuderi, who acknowledged himself to be the Manager of 500 EAST MULTIFAMILY OWNERSHIP, LLC, a Delaware limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of said limited liability company by signing the name of the limited liability company by himself as Manager.

WITNESS my hand and Notarial Seal.



KELLEY A. GUYDER  
Notary Public

My Commission Expires: 11/1/2024

KELLEY A. GUYDER  
Notary Public, State of New York  
No. 01GUS118227  
Qualified in Onondaga County  
Commission Expires November 1, 2024

Address of Agent and Holder:

c/o M&T Bank  
One M&T Plaza  
Buffalo, New York 14203  
Attn: Office of the General Counsel

and

M&T Bank  
Commercial Real Estate Department  
250 South Clinton St 4<sup>th</sup> Fl.  
Syracuse, New York 13202  
Attn: Jonathan Sandgarten

With a copy to

Nancy W. Greene, Esq.  
Miles & Stockbridge P.C.  
100 Light Street, 4<sup>th</sup> Floor  
Baltimore, Maryland 21202

**EXHIBIT A**

**PROPERTY DESCRIPTION**

**ALL** those lots or parcels of real property situate in the County of Salt Lake, State of Utah, being more particularly bounded and described as follows:

**PARCEL 1:**

Beginning at a point South 00°01'54" East (South per deed) along the Block line 118.50 feet from the Northeast corner of Lot 1, Block 37, Plat "B", Salt Lake City Survey, and running thence South 89°58'06" West 90.04 feet (West 90 feet per deed); thence South 00°01'51" East (South) 5.25 feet; thence South 89°58'06" West 75.04 feet (West 75 feet per deed); thence North 00°01'51" West (North per deed) 206.25 feet; thence North 89°58'06" East 165.08 feet (East 165 feet per deed) to the Easterly line of said Block 37; thence South 00°01'54" East (South per deed) along said Easterly line 201.00 feet to the point of beginning.

**PARCEL 2:**

Together with a right of way as disclosed by that certain Warranty Deed recorded February 7, 1979 as Entry No. 3234025 in Book 4810 at Page 1420 of Official Records, being described as follows:

Beginning 118 feet 6 inches South of the Northeast corner of Lot 1, Block 37, Plat "B", Salt Lake City Survey, and running thence South 10 feet 6 inches; thence West 90 feet; thence North 10 feet 6 inches; thence East 90 feet to the point of beginning.