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

Cover Sheet

Date:	As of July 22, 2022
Trustor:	AI 4800 LOFTS OWNER, LLC
Trustor's State of Organization:	Delaware
Trustor's Organizational ID Number:	88-1278556
Trustee:	Highland Title Agency, Inc.
Beneficiary:	BANK OZK
Note Amount:	\$68,500,000.00
Maturity Date:	July 22, 2026
State:	Utah
Record Owner of the Land: (as defined herein)	AI 4800 LOFTS OWNER, LLC

NOTICE: THIS INSTRUMENT SECURES FUTURE ADVANCES, THE PRIORITY OF WHICH DATE TO THE RECORDING DATE HEREOF. THIS INSTRUMENT PROVIDES FOR VARIABLE RATES OF INTEREST

CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (herein referred to as the “**Deed of Trust**”), is entered into as of July 22, 2022, by AI 4800 LOFTS OWNER, LLC, a Delaware limited liability company (“**Trustor**”), as trustor, for all purposes hereunder, whose mailing address for notice hereunder is 1808 Aston Ave., Suite 220, Carlsbad, California 92008, Attention: Ed Monce, to Highland Title Agency, Inc., a Utah corporation (“**Trustee**”), as trustee, whose address is 6622 South 1300 East, Salt Lake City, Utah 84121, for the benefit of BANK OZK (“**Beneficiary**”), as beneficiary for all purposes hereunder, whose address is 8300 Douglas Ave., Suite 900, Dallas, Texas 75225.

W I T N E S S E T H:

**ARTICLE I.
DEFINITIONS**

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Assignment of Rents: That certain Assignment of Rents and Revenues of even date herewith from Trustor to Beneficiary.

Trustor: The individual or entity described as Trustor in the initial paragraph of this Deed of Trust and any and successors and assigns of Trustor that are subsequent owners of the Mortgaged Property or any part thereof (without hereby implying Beneficiary’s consent to any Disposition of the Mortgaged Property).

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is situated.

Construction Contracts: Any and all contracts, subcontracts and agreements, written or oral, between Trustor and any other party, and between parties other than Trustor in any way relating to any restoration, renovation, expansion, repair or construction of all or any portion of the Improvements or the supplying of material (specially fabricated or otherwise), labor, supplies or other services therefor.

Contracts: Any and all: (i) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the

sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements with respect to water, wastewater, and other utility services whether executed, granted, or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, permits, rights and entitlements are now or at any time thereafter existing, including without limitation, any and all certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required: (a) to evidence compliance by Trustor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, (b) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable and (c) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) Economic Incentives or similar agreements or understandings; (v) agreements relating in any way to the construction, development or rehabilitation of the Land or Improvements or provision of materials therefor including, without limitation, all Construction Contracts; (vi) contracts with architects or engineers or others for the preparation or provision of any Plans, including all amendments and supplements to and renewals and extensions of such contracts at any time made; and (vii) other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases and the organizational documents of Trustor, Guarantor and each Constituent Party).

Default Interest Rate: The rate of interest specified in the Note to be paid by Trustor from and after the occurrence and during the continuance of an Event of Default but in no event in excess of the Maximum Lawful Rate.

Disposition: Such term shall have the same meaning as provided in the Loan Agreement.

Environmental Indemnity Agreement: That certain Environmental Indemnity Agreement of even date herewith executed by Trustor and Guarantor for the benefit of Beneficiary.

Event of Default: Any happening or occurrence described in Article VI hereof.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Trustor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, lighting, traffic control, waste

disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) or for any quasi-governmental units (development districts or authorities).

Guarantor (individually and/or collectively, as the context may require): Those Persons, if any, designated as Guarantor in the Guaranty.

Guaranty (individually and/or collectively, as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect, from any Guarantor to Beneficiary guaranteeing the repayment of all or any part of the Indebtedness, the satisfaction of, or continued compliance with, all or any portion of the Obligations, or both, including, without limitation, that certain Guaranty-Carve Out, Guaranty-Completion and Guaranty-Carry.

Improvements: Any and all improvements of any kind or nature all as more particularly described in the Plans, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof, including, without limitation, that certain mixed-use development comprised of (i) the Apartment Component, (ii) the Retail Component, and (iii) approximately 458 parking spaces located on the Land, together with any and all appurtenant rights associated therewith.

Indebtedness: (i) The principal, interest and other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Beneficiary, its successors or assigns, by Trustor, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Trustor and Beneficiary that such future indebtedness may be incurred); (iv) any and all other indebtedness, obligations and liabilities of any kind or character of Trustor to Beneficiary, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations and liabilities to Beneficiary of Trustor as a member of any partnership, joint venture, trust or other type of business association or other legal entity, and whether incurred by Trustor as principal, surety, endorser, guarantor, accommodation party or otherwise; and (v) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements and extensions thereof, it being contemplated by Trustor and Beneficiary that Trustor may hereafter become indebted to Beneficiary in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Deed of Trust shall not secure any such other loan, advance, debt, obligation or liability with respect to which Beneficiary is by applicable law prohibited from obtaining a lien on real estate.

Land: The real property or interest therein described in Exhibit A attached hereto and incorporated herein by reference, together with all rights, titles, interests and privileges of Trustor in and to (i) all streets, ways, 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 such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water, water rights and water courses which are appurtenant to, located on, under or above or used in connection with the Mortgaged Property, or any part thereof, whether adjudicated or unadjudicated, conditional or absolute, tributary or non-tributary, surface or underground, designated or undesignated; (iv) timber, crops, pertaining to such real property; and (v) all appurtenances and all reversions and remainders in or to such real property.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith, whether entered into before or after the filing by or against Trustor of any petition for relief under the United States Bankruptcy Code, 11 U.S.C. §101, et seq., as amended.

Beneficiary: BANK OZK, whose address for notice hereunder is 8300 Douglas Avenue, Suite 900, Dallas, Texas 75225, and the subsequent holder or holders, from time to time, of the Note.

Loan Agreement: That certain Construction Loan Agreement of even date herewith by and between Trustor and Beneficiary, governing advances under the loan evidenced by the Note and secured, inter alia, by this Deed of Trust.

Loan Documents: This Deed of Trust, the Loan Agreement, the Note, the Environmental Indemnity Agreement, the Assignment of Rents, the Guaranty, the Collateral Assignment of Rate Cap Agreement, and any and all other agreements, documents and instruments now or hereafter executed by Trustor or any other Person or party in connection with the Loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof and thereof.

Minerals: All right, title and interest of Trustor in and to all substances in, on, under or above the Land which are now, or may become in the future, intrinsically valuable, and which now or may be in the future enjoyed through extraction or removal from the Land, including, without limitation, oil, gas, all other hydrocarbons, coal, lignite, carbon dioxide, all other non-hydrocarbon gases, uranium, all other radioactive substances, gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Economic Incentives, Contracts, Leases, Rents, Reserves, Plans, and any interest of Trustor now owned or hereafter acquired in and to the foregoing, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations, together with any and all proceeds of any of the

foregoing. As used in this Deed of Trust, the term "**Mortgaged Property**" shall be expressly defined as meaning all or, where the context permits or requires, any part of the above and all or, where the context permits or requires, any interest therein.

Note: That certain Promissory Note of even date herewith in the principal sum of Sixty-Eight Million Five Hundred Thousand and 00/100ths Dollars (\$68,500,000.00) (together with any and all renewals, modifications, reinstatements, enlargements or extensions thereof) executed and delivered by Trustor payable to the order of Beneficiary, evidencing the Loan.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Trustor or Guarantor to Beneficiary as set forth in the Loan Documents.

Permitted Disposition: Such term shall have the same meaning as provided in the Loan Agreement.

Permitted Exceptions: (i) The liens, easements, restrictions, security interests and other matters (if any) expressly listed as special exceptions (i.e., not pre-printed or standard exceptions) to coverage in the title insurance policy insuring the lien of this Deed of Trust and the liens and security interests created by the Loan Documents, (ii) the liens and security interests created by the Loan Documents, (iii) liens for real estate taxes with respect to the Mortgaged Property not yet due or delinquent, subject to Trustor's rights with respect to Contested Items, (iv) the easements, restrictions and encroachments (and not general notes, legal descriptions, surveyor's certifications, ALTA certifications, vicinity maps, basis of bearings, flood zone or zoning information, plotted locations of monuments, fencing, street lights, trees and other similar items) expressly identified as affecting the Mortgaged Property by the survey delivered to and approved by Beneficiary prior to the date hereof in connection with the Loan, (v) entitlements, dedications, easements and encumbrances each entered into in accordance with the terms of the Loan Agreement, (vi) Leases permitted by the Loan Documents or to which Beneficiary has otherwise consented, and (vii) any other matter approved in writing by Beneficiary (such approval to be in Beneficiary's reasonable discretion).

Person: Any corporation, limited liability company, limited liability partnership, general partnership, limited partnership, firm, association, joint venture, trust or any other association or legal entity, including any public or governmental body, quasi-governmental body, agency or instrumentality, as well as any natural person.

Personalty: Any and all (i) furniture, furnishings, equipment, machinery, tangible personal property, and goods located within, used in the operation of or derived from the Improvements, (ii) crops, farm products, timber and timber to be cut and extracted Minerals; (iii) general intangibles (including payment intangibles), money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims; (iv) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Trustor with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but

without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (v) the Construction Contracts, Plans and all building and construction materials and equipment; and (vi) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 Secured Transactions); any and all of which are now owned or hereafter acquired by Trustor, and which are now or hereafter situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof.

Plans: Collectively, the plans and specifications, shop drawings or other technical descriptions prepared for the development of the Land or construction or rehabilitation of the Improvements, as applicable, prepared by Trustor or the Design Professional for or on behalf of Trustor and approved by Beneficiary as and to the extent required in the Loan Agreement, by all applicable Governmental Authorities and by any party to a purchase or Construction Contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings and related items.

Rents: All of the rents, revenues, royalties, income, issues, proceeds, bonus monies, profits, security and other types of deposits (after Trustor acquires title thereto) and other benefits paid or payable by parties to the Leases and/or Contracts (other than Trustor) for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any part of the Mortgaged Property, including, without limitation, "rents" (as defined in the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "Utah Act")).

Reserves: All sums on deposit or due for deposit with Beneficiary under any of the Loan Documents now or hereafter executed by Trustor for the benefit of Beneficiary including (i) the accounts into which such sums have been deposited (including, without limitation, the Impositions Reserve, the Replacement Reserve, the Security Deposit Reserve (Apartment), the Security Deposit Reserve (Retail), the Cash Flow Reserve, and the Trustor's Deposit Reserve); (ii) all interest on said accounts, if any; (iii) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto; (iv) all sums now or hereafter therein or represented thereby; (v) all instruments and documents now or hereafter evidencing such sums or such accounts; (vi) all powers, options, rights, privileges and immunities pertaining to such sums or such accounts (including the right to make withdrawals therefrom); and (vii) all replacements, substitutions or proceeds of the foregoing.

Trustee: The Person described as Trustee in the initial paragraph of this Deed of Trust.

1.2 Additional Definitions. As used herein, the following terms shall have the following meanings: (i) "hereof", "hereby", "hereto", "hereunder", "herewith", and similar terms mean of, by, to, under and with respect to, this Deed of Trust or to the other documents or matters being referenced; (ii) "heretofore" means before, "hereafter" means after, and "herewith" means concurrently with the date of this Deed of Trust; (iii) all pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require; (iv) "including" means including, without limitation; (v) all terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require; and (vi) all capitalized terms not defined in Section 1.1 hereof shall have the meanings ascribed to such terms in the Loan Agreement.

1.3 Not a Revolver Facility. It is expressly understood and agreed that the Indebtedness is not intended to be a "revolver" facility and that no principal amount repaid by Trustor may be re-borrowed by Trustor.

1.4 Maximum Indebtedness. This Deed of Trust secures the payment of the entire indebtedness secured hereby and future advances made in accordance with the Loan Documents and also secures indebtedness incurred at the time this Deed of Trust is executed and indebtedness incurred for advances which may be made by Beneficiary in accordance with the Loan Documents subsequent to the execution of this Deed of Trust even though Beneficiary is under no contractual duty to make such advances.

ARTICLE II. GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, but expressly excluding the Environmental Indemnity Agreement, the Guaranty-Carve Out, and the Guaranty-Completion, Trustor has GRANTED, BARGAINED, SOLD, CONVEYED, ASSIGNED, TRANSFERRED, WARRANTED and SET OVER and with power of sale and right of possession and entry, and by these presents does GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, WARRANT and SET OVER unto Trustee, in trust, with power of sale, all of Trustor's right, title and interest in and to the Mortgaged Property, subject, however, to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, forever, and Trustor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every Person whomsoever lawfully claiming or to claim the same or any part thereof; provided, however, that if Trustor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations then required to be performed or otherwise due and payable on or before the date same are to be performed and discharged, then the liens, security interests, estates and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof; otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee confirming that the Indebtedness has not been fully paid or the Obligations have not

been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact..

ARTICLE III. WARRANTIES AND REPRESENTATIONS

Trustor hereby unconditionally warrants and represents to Beneficiary, as of the date hereof and at all times during the term of this Deed of Trust (except (i) to the extent that any such representations or warranties relate solely to an earlier time period or a particular date specified herein or therein (in which case, such representation or warranty shall be true and correct in all material respects with respect to such time period or as of such specified date) or (ii) to the extent any such representations or warranties are no longer true as a result of the passage of time or changes in facts and circumstances which do not, in and of themselves, constitute, a Default, an Event of Default or a Material Adverse Change under this Deed of Trust or under the other Loan Documents), as follows:

3.1 Title and Lien. Trustor has good and indefeasible title to the Land (in fee simple, if the lien created hereunder be on the fee, or a first and prior leasehold estate, if it be created on the leasehold estate) and the Improvements, and good and marketable title to the Fixtures and Personalty, free and clear of any liens, charges, encumbrances, security interests, claims, easements, restrictions, options, leases, covenants, and other rights, titles, interests, or estates of any nature whatsoever, other than the Permitted Exceptions and the Contested Items. This Deed of Trust constitutes a valid, subsisting first lien on the Land, the Improvements, the Leases and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, Rents, Construction Contracts, Plans and, to the extent that the term "**Leases**" includes items covered by the Code, in and to the Leases; all in accordance with the terms hereof and all subject to the Permitted Exceptions and the Contested Items. The foregoing warranty of title shall survive the foreclosure or other enforcement of this Deed of Trust, and shall inure to the benefit of and be enforceable by Beneficiary in the event Beneficiary acquires title to the Mortgaged Property pursuant to any foreclosure or otherwise.

3.2 Incorporation of Warranties and Representations. All the warranties, representations, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

3.3 Separate Tax Parcel; Legal Lot. To the best of Trustor's actual knowledge, the Mortgaged Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot under all applicable legal requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.

3.4 No Commencement of Construction. As of the date of this Deed of Trust, except as disclosed in Section 4.13 of the Loan Agreement, no work or construction of any kind has been commenced on the Land, except as identified in the Loan Agreement. As of the date of this Deed of Trust there are no outstanding bills for labor and materials relating to the Mortgaged Property due and owing to any contractor, subcontractor, or supplier.

ARTICLE IV. AFFIRMATIVE COVENANTS

Trustor hereby unconditionally covenants and agrees with Beneficiary, that until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

4.1 Payment and Performance. Trustor will pay the Indebtedness as and when specified in the Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 First Lien Status. Trustor will protect the first lien and security interest status of this Deed of Trust and the other Loan Documents and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions and the Contested Items.

4.3 Tax on Deed of Trust. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof, Trustor will promptly pay all such taxes, provided that if such law, as enacted, makes it unlawful for Trustor to pay such tax, Trustor shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Trustor to pay such taxes, then Trustor must prepay the Indebtedness in full within one hundred twenty (120) days after demand therefor by Beneficiary.

4.4 Incorporation of Affirmative Covenants, Conditions and Agreements. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Trustor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay all property taxes and other impositions, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the proceeds of insurance and awards for condemnation shall be settled, held and applied in each case, in accordance with and pursuant to the Loan Agreement.

ARTICLE V. NEGATIVE COVENANTS

Trustor hereby unconditionally covenants and agrees with Beneficiary, that until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

5.1 Use Violations. Except to the extent permitted under the Loan Agreement, Trustor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Trustor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Beneficiary, except to the extent

permitted under the Loan Agreement. Trustor will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which (i) materially violates any legal requirement; (ii) may be materially dangerous, unless safeguarded as required by law and/or appropriate insurance; (iii) constitutes a public or private nuisance; (iv) makes void, voidable or cancelable, or increases the premium (in more than a de minimis amount) of, any insurance then in force with respect thereto; (v) changes the use of the Mortgaged Property in any material respect; (vi) permits or suffers to occur any material waste on or to the Mortgaged Property; or (vii) converts the Mortgaged Property to a condominium or cooperative form of ownership.

5.2 No Drilling. Trustor will not, without the prior written consent of Beneficiary, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof; provided, however, extraction of Minerals from the subsurface of the Land shall not be deemed to violate this Section 5.2 so long as such extraction is done from an offsite location consistent with all legal requirements and in a manner such that no material negative effect or danger whatsoever occurs with respect to the surface of the Mortgaged Property.

5.3 No Disposition or Encumbrance. Neither Trustor nor any shareholder, member or partner of Trustor will make a Disposition without obtaining Beneficiary's prior written consent, other than a Permitted Disposition. Trustor will not create, incur, assume or suffer to exist any lien or encumbrance against all or any portion of the Mortgaged Property, any lien securing a Property Assessed Clean Energy (PACE) or similar loan, other than Permitted Exceptions, Contested Items or as otherwise expressly permitted pursuant to the Loan Agreement.

5.4 Incorporation of Covenants, Conditions and Agreements. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same force as if fully set forth herein.

ARTICLE VI. EVENTS OF DEFAULT

6.1 The term "Event of Default", as used herein shall have the same meaning described for such term in the Loan Agreement.

ARTICLE VII. REMEDIES

7.1 Beneficiary's Remedies upon Event of Default. Upon the occurrence and during the continuance of an Event of Default, Beneficiary may, at Beneficiary's option, and by or through Trustee, by Beneficiary itself or otherwise, do any one or more of the following:

(a) Right to Perform Trustor's Covenants. Beneficiary may, but shall not be obligated to any person to do so, perform or attempt to perform any covenant of Trustor, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall be and become a part of the Indebtedness, and Trustor promises, upon demand, to pay to Beneficiary, at the place where the Note is payable, all sums so advanced or paid by

Beneficiary, with interest from the date when paid or incurred by Beneficiary at the Default Interest Rate. No such payment by Beneficiary shall constitute a waiver of any Event of Default. In addition to the liens and security interests hereof, Beneficiary shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for the payment of which Beneficiary may make an advance, or which Beneficiary may pay.

(b) Right of Entry. To the extent permitted by applicable law, and without becoming a mortgagee in possession, Beneficiary may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and to exercise without interference from Trustor any and all rights which Trustor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Trustor and to apply such Rents as provided in Article IX hereof. All such costs, expenses, and liabilities incurred by Beneficiary in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as set forth in the Assignment of Rents, shall constitute a demand obligation owing by Trustor and shall bear interest from the date of expenditure until paid at the Default Interest Rate, all of which shall constitute a portion of the Indebtedness. If necessary to obtain the possession provided for above, Beneficiary may invoke any and all legal remedies to dispossess Trustor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Beneficiary pursuant to this subsection, Beneficiary shall not be liable for any loss sustained by Trustor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Mortgaged Property unless such loss is caused by the willful misconduct or gross negligence of Beneficiary, nor shall Beneficiary be obligated to perform or discharge any obligation, duty, or liability under any Lease or under or by reason hereof or the exercise of rights or remedies hereunder. TRUSTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY BENEFICIARY FOR, AND TO HOLD BENEFICIARY HARMLESS FROM, ANY AND ALL LIABILITY, ACTUAL OUT-OF-POCKET LOSS, OR DAMAGE, WHICH MAY BE INCURRED BY BENEFICIARY UNDER ANY SUCH LEASE OR UNDER OR BY REASON HEREOF OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST BENEFICIARY BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE; PROVIDED, HOWEVER, THE FOREGOING INDEMNIFICATION SHALL NOT INCLUDE ANY OF THE SAME TO THE EXTENT (I) ATTRIBUTABLE TO THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR ILLEGAL ACT OF BENEFICIARY, (II) CAUSED BY THE BREACH OF THE LOAN DOCUMENTS BY BENEFICIARY AS DETERMINED BY A FINAL, NON-APPEALABLE ORDER OF A COURT OF COMPETENT JURISDICTION OR (III) ATTRIBUTABLE TO ACTIONS THAT ARE TAKEN AFTER BENEFICIARY OR ITS NOMINEE OR DESIGNEE TAKES POSSESSION OF THE MORTGAGED PROPERTY (BUT ONLY TO THE EXTENT NOT CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF TRUSTOR OR ANY AFFILIATE OR AGENT OF TRUSTOR). Should Beneficiary incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with

interest thereon from the date of expenditure until paid at the Default Interest Rate, shall be secured hereby, and Trustor shall reimburse Beneficiary therefor within ten (10) days after written demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon Beneficiary for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any hazardous or environmentally sensitive substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Trustor hereby assents to, ratifies, and confirms any and all actions of Beneficiary with respect to the Mortgaged Property taken under this subsection.

(c) Right to Accelerate. Beneficiary may, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Trustor and all other parties obligated in any manner whatsoever on the Indebtedness, declare the entire unpaid balance of the Indebtedness immediately due and payable, and upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Beneficiary shall not be deemed to be a waiver of any rights or remedies of Beneficiary under the Loan Documents at law or in equity.

(d) Power of Sale. Beneficiary may execute written notice of such Event of Default and of its election to cause the Mortgaged Property to be sold by Trustee under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(i) Public Sale. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Beneficiary, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of the statute or statutes, if any, governing sales of Utah real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Utah real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Utah real property under powers of sale conferred by deeds of trust.

(ii) Right to Require Proof of Financial Ability and/or Cash Bid. To the extent permitted by applicable law, at any time during the bidding, the Trustee may require a bidding party (A) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "**Questioned Bidder**") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee, in Trustee's sole and absolute

discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of Trustor and Beneficiary, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; provided, however, that the Trustee shall have no obligation to accept any bid except an all cash bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(iii) Intentionally Omitted.

(iv) Intentionally Omitted.

(v) Trustee's Deeds. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder, conveying the Mortgaged Property or any part thereof so sold to the purchaser or purchasers. Trustee shall deliver to the purchaser at such sale a deed conveying the Mortgaged Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may purchase at the sale.

(e) Beneficiary's Judicial Remedies. To the extent permitted by applicable law, Beneficiary, or Trustee upon written request of Beneficiary, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations in accordance with the terms hereof, of the Note and the other Loan Documents to foreclose the liens and security interests of this Deed of Trust as against all of the Mortgaged Property, and to have all of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to Beneficiary with respect to the Loan Documents. To the extent permitted in accordance with applicable law, proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of Beneficiary.

(f) Beneficiary's Right to Appointment of Receiver. Subject to and in accordance with applicable law, Beneficiary, as a matter of right and without regard to the sufficiency of the security for repayment of the Indebtedness and performance and discharge of the Obligations, without notice to Trustor and without any showing of insolvency, 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 or receivers of the Mortgaged Property or any part thereof, and of the

Rents, and Trustor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(g) Beneficiary's Uniform Commercial Code Remedies. Beneficiary may exercise its rights of enforcement with respect to Fixtures and Personalty under the Code, and in conjunction with, in addition to or in substitution for the rights and remedies under the Code Beneficiary may and Trustor agrees as follows:

(i) without demand or notice to Trustor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable; and

(ii) Beneficiary may require Trustor to assemble the Personalty and make it available at a place Beneficiary designates which is mutually convenient to allow Beneficiary to take possession or dispose of the Personalty; and

(iii) written notice mailed to Trustor as provided herein at least ten (10) days prior to the date of public sale of the Personalty or prior to the date after which private sale of the Personalty will be made shall constitute reasonable notice; and

(iv) any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 70A-9a-604 of the Code; and

(v) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Beneficiary, be sold as a whole; and

(vi) it shall not be necessary that Beneficiary take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale; and

(vii) prior to application of proceeds of disposition of the Personalty to the Indebtedness, such proceeds shall be applied to 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 Beneficiary; and

(viii) after notification, if any, hereafter provided in this subsection, Beneficiary may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Beneficiary's offices or elsewhere, for cash, on credit, or for future delivery. Upon the request of Beneficiary, Trustor shall assemble the Personalty and make it available to Beneficiary at any place designated by Beneficiary that is

reasonably convenient to Trustor and Beneficiary. Trustor agrees that Beneficiary shall not be obligated to give more than ten (10) days' written notice of the time and place of any public sale or of the time after which any private sale may take place and that such notice shall constitute reasonable notice of such matters. Trustor shall be liable for all reasonable expenses of retaking, holding, preparing for sale, or the like, and all reasonable attorneys' fees, legal expenses, and all other costs and expenses incurred by Beneficiary in connection with the collection of the Indebtedness and the enforcement of Beneficiary's rights under the Loan Documents. Beneficiary shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of Section 7.4 of this Deed of Trust. Trustor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. To the fullest extent allowed by applicable law, Trustor waives all rights of marshalling in respect of the Personalty; and

(ix) 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, the nonpayment of the Indebtedness, the occurrence of any Event of Default, Beneficiary having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(x) Beneficiary 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 Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary.

(h) Rights Relating to Rents. Trustor has, pursuant to the Assignment of Rents, assigned to Beneficiary all Rents under each of the Leases covering all or any portion of the Mortgaged Property. Beneficiary, or Trustee on the Beneficiary's behalf, may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents in accordance with the Assignment of Rents. All Rents collected by Beneficiary, or Trustee on Beneficiary's behalf, shall be applied as provided for in the Assignment of Rents; provided, however, that if the costs, expenses, and reasonable attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Interest Rate, and shall be immediately due and payable. The entrance upon and possession of the Mortgaged Property, the collection of Rents, and the application thereof as set forth above shall not cure or waive any Event of Default or notice default, if any, hereunder nor invalidate any action pursuant to such notice. Failure or discontinuance by Beneficiary, or Trustee on Beneficiary's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Beneficiary, or Trustee on Beneficiary's behalf, of the right, power and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Beneficiary, or Trustee on Beneficiary's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Trustor to Beneficiary.

In addition, Beneficiary may from time to time elect, and notice hereby is given to each lessee under each Lease, to subordinate the lien of this Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election, the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; provided, however, in each instance, such subordination will not affect or be applicable to (and will expressly exclude), any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant and other rights, titles, interests or estates of any nature regarding all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the Lease identified in such instrument of subordination. This Subsection is subject to the Utah Act, and in the event of any conflict or inconsistency between the provisions of this Subsection and the provisions of the Utah Act, the provisions of the Utah Act shall control and Beneficiary shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

(i) Other Rights. Beneficiary (i) may surrender the insurance policies maintained pursuant to the Loan Agreement or any part thereof, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of Section 7.4 hereof, and, in connection therewith, Trustor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Trustor to collect such premiums; and (ii) apply the reserve for all property taxes and other impositions and insurance premiums, if any, required by the provisions of this Deed of Trust, toward payment of the Indebtedness; and (iii) shall have and may exercise any and all other rights and remedies which Beneficiary may have at law or in equity, or by virtue of any Loan Document or under the Code, or otherwise.

(j) Beneficiary as Purchaser. Subject to and in accordance with applicable law, upon sale of the Mortgaged Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Indebtedness or Obligations secured by this Deed of Trust. Beneficiary, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Beneficiary's purchase shall be applied in accordance with Section 7.4 of this Deed of Trust.

7.2 Other Rights of Beneficiary. Should any part of the Mortgaged Property come into the possession of Beneficiary, during the continuance of an Event of Default, Beneficiary may (for itself or by or through other persons, firms, or entities) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Beneficiary may deem prudent under the circumstances (making such repairs, alterations, additions, and improvements thereto and taking such other action as Beneficiary may from time to time deem reasonably necessary) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of appropriate jurisdiction or in accordance with any other rights held by Beneficiary in respect of the Mortgaged Property. Trustor covenants to promptly reimburse and pay to Beneficiary upon written demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, property taxes, impositions, or other charges) incurred by Beneficiary in connection with Beneficiary's custody, preservation, use, or operation of the Mortgaged Property, together with interest thereon from the date incurred by Beneficiary at the Default Interest Rate; and all such expenses, costs, taxes,

interest, and other charges shall be and become a part of the Indebtedness. It is agreed, however, that the risk of loss or damage to the Mortgaged Property is on Trustor, and Beneficiary shall have no liability whatsoever for decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether insurance in force is adequate as to amount or as to the risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Mortgaged Property or collateral not in Beneficiary's possession.

7.3 Possession After Foreclosure. If the liens or security interests hereof shall be foreclosed by power of sale granted herein, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the property purchased, and if Trustor or Trustor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Trustor and Trustor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property, after demand is made for possession thereof, shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this Article VII, or the proceeds from the surrender of any insurance policies pursuant to any of the Loan Documents or any Rents collected by Beneficiary from the Mortgaged Property (following any application of such Rents in accordance with the Assignment of Rents), or sums received pursuant to Section 8.1 hereof which Beneficiary elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, or proceeds from insurance received pursuant to Section 8.2 hereof which Beneficiary elects to apply to the Indebtedness in accordance with the applicable provisions of the Loan Agreement, shall be applied by Beneficiary or Trustee, as the case may be, to the Indebtedness in accordance with applicable law, or, to the extent permitted by applicable law, in the following order and priority: (i) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums, or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee; (ii) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, and third, to prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (iii) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or Beneficiary of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (Trustee and Beneficiary shall hereby be entitled to rely exclusively upon a commitment for title insurance issued to determine such priority); and (iv) the cash balance, if any, to Trustor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note and the other Loan Documents. Notwithstanding anything to the contrary herein, Trustee shall apply the

proceeds of any foreclosure sale to payment of (1) the costs and expense of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) the obligations secured by this Deed of Trust; (3) the balance, if any, to the person or person's legally entitled to the proceeds, or the Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Ann. § 57-1-29.

7.5 Abandonment of Sale. In case Beneficiary shall have proceeded to commence enforcement of any right, power, or remedy under this Deed of Trust by foreclosure, entry or otherwise or in the event advertising of the intended exercise of the sale under power provided hereunder is commenced, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason in accordance with the provisions of this Deed of Trust, then in every such case (i) Trustor and Beneficiary shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Beneficiary shall continue as if no such proceeding had been taken, (iii) each and every Event of Default declared or occurring and continuing prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing Event of Default, and (iv) neither this Deed of Trust, nor the Note, nor the Indebtedness, nor any other Loan Document shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Trustor, to the extent permitted by applicable law, hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with this sentence.

7.6 Payment of Fees. If the Note or any other part of the Indebtedness shall be collected or if any of the Obligations shall be enforced by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Beneficiary to mature same, or if Beneficiary becomes a party to any suit where this Deed of Trust or the Mortgaged Property or any part thereof is involved, Trustor agrees to pay Beneficiary's reasonable attorneys' fees and expenses incurred, and such fees shall be and become a part of the Indebtedness and shall bear interest from the date such costs are incurred at the Default Interest Rate.

7.7 Miscellaneous.

(a) Discontinuance of Remedies. In case Beneficiary shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Trustor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Loan Documents, the Mortgaged Property or otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if same had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this Article, upon the occurrence and during the continuance of an Event of Default, Beneficiary and Trustee shall, in addition, have all other remedies available to them at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. Subject to and in accordance with applicable law, all rights, remedies, and recourses of Beneficiary granted in the Note, this Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Trustor, the Mortgaged Property, or any one or more of them, at the sole discretion of Beneficiary; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; and (iv) shall be nonexclusive.

(d) Partial Release; Etc. Beneficiary may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the lien or security interests evidenced by this Deed of Trust or the other Loan Documents or affecting the obligations of Trustor or any other party to pay the Indebtedness or perform and discharge the Obligations. For payment of the Indebtedness, Beneficiary may resort to any of the collateral therefor in such order and manner as Beneficiary may elect. No collateral heretofore, herewith, or hereafter taken by Beneficiary shall in any manner impair or affect the collateral given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(e) Waiver and Release by Trustor. To the fullest extent allowed by applicable law, Trustor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Trustor by virtue of any present or future law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisalment, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Trustee exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. Trustor and Beneficiary mutually agree that there are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note and the other Loan Documents.

(g) Real Property Laws Govern. The remedies in this Article VII shall be available under and governed by the laws of Utah.

ARTICLE VIII.SPECIAL PROVISIONS

8.1 Condemnation Proceeds. Subject to the terms of the other Loan Documents, Beneficiary shall be entitled to receive any and all sums which may be awarded and become payable to Trustor for condemnation of the Mortgaged 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 damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to Beneficiary, and Trustor shall, upon request of Beneficiary, make, execute, acknowledge, and deliver any and all additional assignments and documents as may be necessary from time to time to enable Beneficiary to

collect and receive any such sums. Beneficiary shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums. Any sums received by Beneficiary as a result of condemnation shall be applied or disbursed in accordance with the terms of the Loan Agreement.

8.2 Insurance Proceeds. Subject to the terms of the Loan Agreement, the proceeds of any and all insurance upon the Mortgaged Property shall be collected by Beneficiary to be applied or disbursed in accordance with the terms of the Loan Agreement.

ARTICLE IX. ASSIGNMENT OF RENTS

9.1 Assignment of Rents. Reference is made to the Assignment of Rents of even date herewith which is made a part hereof for all purposes.

ARTICLE X. SECURITY AGREEMENT

10.1 Security Interest. This Deed of Trust (i) shall be construed as a mortgage on real property, and (ii) shall also constitute and serve as a "**Security Agreement**" on personal property within the meaning of the Code, and shall constitute until the grant of this Deed of Trust shall terminate as provided in Section 12.1 hereof, a first and prior security interest under the Code as to property within the scope thereof and in the state where the Mortgaged Property is located with respect to the Personalty, Fixtures, Contracts, Rents, Leases, Construction Contracts and Plans. To this end, Trustor has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED, and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Trustee and Beneficiary, a first and prior security interest in all of Trustor's right, title and interest in, to, under and with respect to the Personalty, Fixtures, Contracts, Rents, Leases, Construction Contracts and Plans to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. It is the intent of Trustor, Beneficiary and Trustee that this Deed of Trust encumber all Leases and that all items contained in the definition of "**Leases**" which are included within the Code be covered by the security interest granted in this Article; and all items contained in the definition of "**Leases**" which are excluded from the Code be covered by the provisions of Article II hereof.

10.2 Financing Statements. Trustor hereby agrees with Beneficiary to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such reasonable "**Financing Statements**" and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect, and preserve Beneficiary's security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect, and preserve such security interest; provided, that in no event shall such financing statements or further assurances increase the liabilities or obligations or decrease the rights of Trustor under the Loan Documents in any material respect (except for such adjustment in rights, liabilities and obligations as is inherent in a perfection of Beneficiary's existing security interest under the Loan Documents). Without limiting the foregoing, Trustor hereby specifically authorizes Beneficiary

to prepare, file of record or otherwise effectuate new financing statements, financing statement amendments and financing statement continuations which describe all assets of Trustor or all or any portion of the Mortgaged Property as collateral thereunder and Trustor specifically agrees that Beneficiary may cause same to be filed without any signature of a representative of the Trustor appearing thereon where such filings are permitted by applicable law.

10.3 Construction Deed of Trust and Fixture Filing. This Deed of Trust secures future advances to be used for construction of Improvements on the Land pursuant to the Loan Agreement. IT IS INTENDED BY TRUSTOR AND BENEFICIARY THAT TO THE EXTENT ALLOWED BY LAW, THIS DEED OF TRUST BE EFFECTIVE AS A FINANCING STATEMENT FILED WITH THE DEED OF TRUST RECORDS AS A FIXTURE FILING. This Deed of Trust shall also constitute a “**fixture filing**” for the purposes of the Code. All or part of the Mortgaged Property are or are to become fixtures; information concerning the security interest herein granted may be obtained from the parties hereto at the addresses set forth on the first page hereof. For purposes of the security interest herein granted, the address of Debtor (Trustor) is set forth in the first paragraph of this Deed of Trust and the address of the Secured Party (Beneficiary) is set forth in Article I hereof.

ARTICLE XI. CONCERNING THE TRUSTEE

11.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

11.2 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering

by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property, except for Trustee's willful misconduct, gross negligence or bad faith. 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 Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for reasonable expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay the compensation due to Trustee hereunder, as provided in Section 7.4 above, and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties, except for liabilities or expenses arising from Trustee's gross negligence, willful misconduct or bad faith.

11.3 Retention of Money. 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 applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

11.4 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing to Beneficiary and Trustor. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, 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. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

11.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be reasonably required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor, provided that such required deeds, conveyances and instruments do not materially modify the terms of this Deed of Trust or any of the other Loan Documents other than to a de minimis extent.

11.6 Succession Instruments. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

11.7 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

ARTICLE XII. MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full in accordance with the terms of this Deed of Trust, the Note, and the other Loan Documents and if Trustor shall well and truly perform each and every one of the Obligations to be performed and discharged in accordance with the terms of the Loan Documents (other than Obligations which survive the repayment of the Indebtedness in full), then this Deed of Trust shall terminate and shall become null and void and be reconveyed or released at Trustor's request and expense in accordance with applicable law governing the discharge of mortgages or deeds of trust in the State of Utah, and Beneficiary shall have no further obligation to make advances under and pursuant to the provisions hereof or the other Loan Documents.

12.2 Performance at Trustor's Expense. Trustor shall (i) pay all reasonable legal fees incurred by Beneficiary in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (ii) reimburse Beneficiary, promptly upon written demand, for all amounts expended, advanced, or incurred by Beneficiary to satisfy any obligation of Trustor under the Loan Documents, which amounts shall include all court costs, reasonable attorneys' fees (including, without limitation, for trial, appeal, or other proceedings), reasonable fees of auditors and accountants and other investigation expenses reasonably incurred by Beneficiary in connection with any such matters; and (iii) any and all other costs and expenses of performing or complying with any and all of the Obligations. Except to the extent that costs and expenses are included within the definition of "**Indebtedness**", the payment of such costs and expenses shall not be credited, in any way and to any extent, against any installment on or portion of the Indebtedness.

12.3 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for

therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this section shall limit the obligations of Trustor as otherwise set forth herein.

12.4 Recording and Filing. Trustor will cause this Deed of Trust and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and re-filed in such manner and in such places as Trustee or Beneficiary shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, documentary stamp taxes, intangible taxes, fees, and other charges.

12.5 Notices. All notices or other communications required or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be considered as properly given if provided in a manner consistent with the notice provisions in the Loan Agreement.

12.6 Covenants Running with the Land. All Obligations contained in this Deed of Trust, and the other Loan Documents are intended by Trustor, Beneficiary and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Deed of Trust has been fully released by Beneficiary in accordance with the terms herein.

12.7 Successors and Assigns. All of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives and all other Persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Trustor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Trustor or others of any and all of such terms, provisions, and conditions. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable legal requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, then neither the remainder of the instrument in which such provision is contained nor the application of such provision to other Persons or circumstances nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached

to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 APPLICABLE LAW. IT IS ACKNOWLEDGED AND AGREED THAT PAYMENTS ON THE INDEBTEDNESS ARE TO BE MADE IN THE STATE OF NEW YORK AND THAT IT IS THE INTENTION OF TRUSTOR AND BENEFICIARY THAT THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CHOICE OF LAWS OR CONFLICT OF LAWS RULES) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF NEW YORK; PROVIDED, HOWEVER, IT IS ACKNOWLEDGED THAT SOLELY WITH RESPECT TO REMEDIAL MEASURES UNDER THIS DEED OF TRUST OR OTHER LOAN DOCUMENTS WITH RESPECT TO THE MORTGAGED PROPERTY WHICH MUST NECESSARILY BE GOVERNED BY THE LAWS OF THE STATE WHEREIN THE LAND AND IMPROVEMENTS ARE LOCATED THAT THE LOCAL STATE LAWS WHERE SUCH LAND AND IMPROVEMENTS ARE LOCATED SHALL GOVERN SOLELY WITH RESPECT TO SUCH REMEDIAL MEASURES. IT IS FURTHER AGREED THAT APPROPRIATE VENUE IN ANY DISPUTE OCCURRING RELATIVE TO THE LOAN DOCUMENTS, WHETHER IN FEDERAL OR STATE COURT, SHALL BE IN NEW YORK COUNTY, NEW YORK, AND TRUSTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR *FORUM NON CONVENIENS* OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TRUSTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDINGS. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF BENEFICIARY TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST TRUSTOR IN ANY OTHER JURISDICTION.

12.11 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged Property, then, to the extent of such funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the performance and discharge of the Obligations.

12.12 Rights Cumulative. To the extent permitted by applicable law, Beneficiary shall have all rights, remedies, and recourses granted in the Loan Documents and available at law or in equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property or any portion thereof), and the same (i) shall be cumulative and concurrent, (ii) may be pursued separately, successively, or concurrently against Trustor or others obligated for the Indebtedness or any part thereof, or against any one or more of them, or against the Mortgaged

Property, at the sole discretion of Beneficiary, (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Trustor that the exercise, discontinuance of the exercise of or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (iv) are intended to be, and shall be, nonexclusive. All rights and remedies of Beneficiary hereunder and under the other Loan Documents shall extend to any period after the initiation of foreclosure proceedings, judicial or otherwise, with respect to the Mortgaged Property.

12.13 Headings. The Article, Section, and Subsection entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Articles, Sections, or Subsections.

12.14 Loan Agreement. Reference is hereby made for all purposes to the Loan Agreement of even date herewith between Beneficiary and Trustor pertaining to the construction of Improvements on the Land, and the funding of the principal amount of the Note. In event of a conflict between the terms and provisions hereof and the Loan Agreement, the Loan Agreement shall govern.

12.15 Construction. All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

12.16 ENTIRE AGREEMENT; AMENDMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW, PURSUANT TO UTAH CODE ANN. SECTION 25-5-4, BORROWER IS NOTIFIED THAT THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO ORAL AGREEMENTS AMONG THE PARTIES HERETO. THE PROVISIONS OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS MAY BE AMENDED OR WAIVED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE RESPECTIVE PARTIES TO SUCH DOCUMENTS.

12.17 WAIVER OF RIGHT TO TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF TRUSTOR AND BENEFICIARY, BY ITS ACCEPTANCE HEREOF, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM THAT RELATES TO OR ARISES OUT OF ANY OF THE LOAN DOCUMENTS OR THE ACTS OR FAILURE TO ACT OF OR BY

BENEFICIARY IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS.

12.18 NOTICE OF INDEMNIFICATION. TRUSTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS, INCLUDING, BUT NOT LIMITED TO SECTION 7.1 HEREOF WHICH MAY, IN CERTAIN INSTANCES, INCLUDE INDEMNIFICATION BY TRUSTOR OR OTHERS AGAINST BENEFICIARY'S OWN NEGLIGENCE.

12.19 Exculpation. The terms and provisions of Section 9.22 of the Loan Agreement are hereby incorporated by this reference as if more fully set forth herein.

12.20 Limitations. All rights, powers and remedies provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded or enforced under the provisions of any applicable law. In addition to the foregoing, Section 7.1(h) of this Deed of Trust is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. §§57-26-101 *et. seq.* ("Rents Act"), and in the event of any conflict or inconsistency between the provisions of this Deed of Trust and the provisions of the Rents Act, the provisions of the Rents Act shall control.

**ARTICLE XIII.
STATE LAW PROVISIONS**

Notwithstanding anything to the contrary contained in this Deed of Trust, the following state law provisions shall apply:

13.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article XIII and the other terms and conditions of this Deed of Trust, the terms and conditions of this Article XIII shall control and be binding.

13.2 Election to Foreclose as a Mortgage. Upon the occurrence of an Event of Default, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be fixed by the court. The proceeds or avails of a sale pursuant to the foreclosure of this Deed of Trust as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising the Mortgaged Property, and attorneys' fees as herein provided, second to pay to Beneficiary the then outstanding amount of the secured Indebtedness or Obligations with interest at the rate set forth in the Note, and third to the person so entitled. Beneficiary may purchase all or any part of the Mortgaged Property at such sale.

13.3 Remedies Not Exclusive. The provisions of Articles VII shall not be deemed to preclude the exercise by Beneficiary of any remedies set forth in any other Article of this Deed of Trust.

13.4 Indemnification Obligations Not Secured. Notwithstanding anything to the contrary contained herein or in any other Loan Document, no indemnification obligation of Trustor shall be deemed to be secured by this Deed of Trust.

13.5 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Deed of Trust or any application thereof shall be invalid or unenforceable, the remainder of this Deed of Trust and any other application of the term shall not be affected thereby.

13.6 UTAH STATUTE OF FRAUDS – NOTICE TO TRUSTOR. PURSUANT TO UTAH CODE, ANN. §25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS AND OTHER RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

*[Remainder of page intentionally left blank;
signature page follows]*

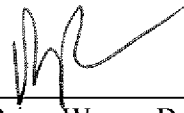
EXECUTED to be effective as of the date first written above.


TRUSTOR:

AI 4800 LOFTS OWNER, LLC,
a Delaware limited liability company

By: AI 4800 LOFTS INVESTMENTS, LLC,
a Delaware limited liability company,
its sole member

By: IMH 4800 LOFTS 1, LLC,
a Delaware limited liability company,
its Administrative Member

By: 
Name: Brian Wayne Doyle
Title: Manager

By: 
Name: Eddy Dean Monce
Title: Manager

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

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

State of California)

County of San Diego)

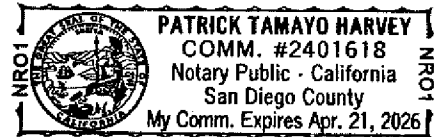
On 3 June before me, Patrick Tamayo Harvey,
(here insert name and title of the officer)

personally appeared Eddy Dean Mance

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

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

WITNESS my hand and official seal.



Signature [Signature]

(Seal)

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s) _____
Title(s) _____

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- ☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

- ☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐ _____

ACKNOWLEDGEMENT

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

STATE OF California

COUNTY OF San Diego

)
) ss:
)

On 3 June, 2022 before me, Patrick Tamayo Harvey (here insert name of the officer), Notary Public, personally appeared Brian Wayne Doyle, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

PTA
Notary Public

[Seal]

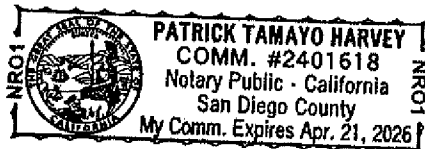


EXHIBIT A
LAND DESCRIPTION

The Land referred to herein below is situated in the County of Salt Lake, State of Utah, and is described as follows:

Beginning at a point on the South right of way line of 4800 South Street South 00°02'22" East 145.31 feet to the centerline of 4800 South Street and North 89°47'36" West, along said centerline of 4800 South Street, 687.39 feet, and South 04° 25'09" East 33.11 feet from the Northeast Corner of the Northwest Quarter of Section 12, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence South 04°25'09" East a distance of 209.28 feet; thence South 89°48'55" East a distance of 293.67 feet; thence South 00°19'04" East a distance of 328.50 feet; thence South 89°02'00" West a distance of 115.35 feet; thence South 09°13'44" West a distance of 107.05 feet to the center of Little Cottonwood Creek; thence along said creek North 57°02'18" West a distance of 74.34 feet; thence along said creek North 70°13'36" West a distance of 168.54 feet; thence North 06°00'00" West a distance of 301.08 feet; thence North 71°49'45" West a distance of 226.48 feet; thence North 00°40'32" West a distance of 179.25 feet; thence South 89°47'36" East, a distance of 290.63 feet to the point of beginning.

Tax Parcel No. 21-12-129-031