

BL SANTA FE, LLC  
(Grantor)

to

FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW MEXICO, INC.  
(Trustee)

for the Benefit of

FORTRESS CREDIT CO LLC  
(Beneficiary)

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

Dated: As of June 14, 2019

Location: As described on Exhibit A attached hereto

County: Santa Fe  
State: New Mexico

PREPARED BY AND UPON  
RECORDATION RETURN TO:

Gibson, Dunn & Crutcher LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071  
Attention: L. Mark Osher

103172181

*Handwritten:* PMP 805971236

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

THIS DOCUMENT SECURES FUTURE ADVANCES TO FINANCE  
CONSTRUCTION OF IMPROVEMENTS ON THE ENCUMBERED REAL PROPERTY.

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Deed of Trust*") is made as of June 14, 2019, by **BL SANTA FE, LLC**, a Delaware limited liability company, having its principal place of business at c/o HRV Hotel Partners, LLC, 112 W. San Francisco, Suite 310, Santa Fe, New Mexico 87501, as grantor ("*Grantor*") to **FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW MEXICO, INC.**, as trustee ("*Trustee*") having an address at 8500 Menaul Boulevard N.E., Suite B-150, Albuquerque, New Mexico 87112, for the benefit of **FORTRESS CREDIT CO LLC**, a Delaware limited liability company (in such capacity, together with its successors and/or assigns, "*Beneficiary*") (as agent for the benefit of **FORTRESS CREDIT CO LLC**, a Delaware limited liability company having an address at c/o Fortress Investment Group LLC, 1345 Avenue of the Americas, 46th Floor, New York, New York 10105 (together its successors and assigns and such other co-lenders as may exist from time to time, "*Lender*")), as beneficiary.

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

A. This Deed of Trust is given to secure a loan (the "*Loan*") in the maximum principal sum of **FORTY-THREE MILLION AND 00/100 DOLLARS (\$43,000,000.00)** or so much thereof as may be advanced pursuant to that certain Loan Agreement, dated as of the date hereof, by and among Grantor (as borrower), Lender and Beneficiary (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "*Loan Agreement*"), and evidenced by that certain Promissory Note dated the date hereof, in the face amount of **FORTY-THREE MILLION AND 00/100 DOLLARS (\$43,000,000.00)**, made by Grantor to Lender (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof, being hereinafter referred to as the "*Note*"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. Grantor desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums (including, without limitation, any fees or other sums due in connection with the repayment and/or prepayment of the Loan) due to Lender in respect of the Loan and the Loan Documents (the "*Debt*") and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

C. This Deed of Trust is given pursuant to the Loan Agreement, and payment, fulfillment and performance by Grantor of Grantor's obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement, the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Deed of Trust (the Loan Agreement, the Note, this Deed of Trust, that certain Assignment of

Leases and Rents of even date herewith made by Grantor to Beneficiary for the benefit of Lender (the “*Assignment of Leases*”), and all other documents evidencing or securing the Loan or delivered in connection with the making of the Loan, collectively, the “*Loan Documents*”).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Deed of Trust:

## ARTICLE I.

### GRANTS OF SECURITY

**Section 1.01 Trust Property.** Grantor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey unto Trustee, in trust for the benefit of Beneficiary and its successors and assigns, for the benefit of Lender, WITH POWER OF SALE, and with mortgage covenants and upon the statutory mortgage condition (except as may otherwise be provided in the Loan Documents) for the breach of which this Deed of Trust is subject to foreclosure as provided by law, all right, title, interest and estate of Grantor now owned, or hereafter acquired, in and to the following property, rights, interests and estates now owned or hereafter acquired by Grantor (collectively, the “*Property*”);

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “*Land*”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Grantor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage, deed of trust or otherwise be expressly made subject to the lien of this Deed of Trust;

(c) Improvements. The buildings, condominium units, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “*Improvements*”);

(d) Condominium Rights. Under and pursuant to any condominium declaration and any other related condominium documents now or hereafter affecting the Property, if any;

(e) Intentionally Omitted.

(f) Appurtenances. All of Grantor’s right and interest in and to (i) all air, light, lateral support and development now or hereafter pertaining to or used in connection with the Land; (ii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land; (iii) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land; and (iv) all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the

reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Grantor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto (collectively, the “*Appurtenances*”);

(g) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Grantor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, appliances, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Grantor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “*Equipment*”). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases, in each case except to the extent that Grantor shall have any right or interest therein;

(h) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Grantor which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items 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, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Grantor’s interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the “*Fixtures*”);

(i) Personal Property. All furniture, furnishings, objects of art, machinery goods, tools, supplies, appliances, general intangibles, contract rights (including, without limitation, the Contracts, the Major Contracts, the Architect’s Contract, the Sales Agency Agreement, if any, the Hotel Management Agreement, and the Development Agreement), the Affiliate Contracts, the Plans and Specifications, the Governmental Approvals (to the extent permitted by applicable law), accounts, accounts receivable, franchises, licenses, bonds, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), whether tangible or intangible (including, but not limited to: all spare parts inventories, uniforms, other inventory and

similar items, beds, bureaus, chiffoniers, chests, armoires, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, linens, pillows, blankets, glassware, tableware, dishes, chinaware, cutlery, silverware, potted plants, food carts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, mini bars, liquor and other drink dispensers, icemakers, radios, television sets, and other customary personal property associated with the ownership and operation of a hotel, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, fittings, heating fixtures, lighting fixtures, plumbing fixtures, fire prevention and extinguishing equipment and materials and all other apparatuses, stoves, ranges, refrigerators, laundry machines, machinery, specialized equipment for bars, restaurants, public rooms, health and recreational facilities, boilers, incinerators, switchboards, conduits, compressors, elevators, escalators, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers, computer equipment, reservation system computers and related equipment, calculators, adding machines, any other electronic equipment of every nature, and all other equipment, manual, mechanical or motorized for the construction, maintenance, repair and cleaning of, parking areas, walks, underground ways, truckways, driveways and common areas), other than Fixtures, which are now or hereafter owned by Grantor or which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the “**Personal Property**”), and the right, title and interest of Grantor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the “**Uniform Commercial Code**”), superior in lien to the lien of this Deed of Trust, and all proceeds and products of any of the above;

(j) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Grantor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the “**Bankruptcy Code**”) (collectively, the “**Leases**”), and all right, title and interest of Grantor, its successors and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder, and all amounts paid or payable (including forfeited deposits) under contracts for the sale of any portion of the Land and the Improvements, and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Grantor of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”), and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations (as defined below), including the payment of the Debt;

(k) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(l) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(m) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in Taxes or Other Charges charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

(n) Rights. The right, in the name and on behalf of Grantor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary and Lender in the Property;

(o) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into (including, without limitation, any architect, expediter or engineer agreements), and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Grantor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Grantor thereunder;

(p) Intellectual Property. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, URLs or other online media, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(q) Accounts. All (i) accounts receivable (including, without limitation, any account, fees, charges or other payments arising from the use and occupancy of hotel rooms and/or other hotel or public facilities at the Property), (ii) credit card receivables, and (iii) reserves, escrows and deposit accounts maintained by Grantor with respect to the Property, including, without limitation, the Accounts and all accounts established or maintained pursuant to the Loan Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(r) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(s) Minerals; Vegetation. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

(t) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(u) Other Rights. Any and all other rights of Grantor in and to the items set forth in Subsections (a) through (t) above.

AND, without limiting any of the other provisions of this Deed of Trust, to the extent permitted by applicable law, Grantor expressly grants to Beneficiary, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements, the Appurtenances and the Fixtures collectively referred to as the “**Real Property**”) appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Deed of Trust be deemed conclusively to be real estate and subject to the lien hereof.

**Section 1.02 Assignment of Rents**. Grantor hereby absolutely and unconditionally assigns to Beneficiary (for the benefit of Lender) all of Grantor’s right, title and interest in and to all current and future Leases and Rents; it being intended by Grantor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Rents, the Loan Documents, and Section 7.01(j) of this Deed of Trust, Beneficiary grants to Grantor a revocable license to collect, receive, use and enjoy the Rents. Grantor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

**Section 1.03 Security Agreement**. This Deed of Trust is both a deed of trust and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Grantor in the Property. By executing and delivering this Deed of Trust, Grantor hereby grants to Beneficiary (for the benefit of Lender), as security for the Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the “**Collateral**”). If an Event of Default shall occur and be continuing, Beneficiary, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Beneficiary after the occurrence and during the continuance of an Event of Default, Grantor shall, at its expense, assemble the Collateral and make it available to Beneficiary at a convenient place (at the Land if tangible property) reasonably acceptable to Beneficiary. Grantor shall pay to Beneficiary (for the benefit of Lender) on demand any and all expenses, including documented, out-of-pocket attorneys’ fees and costs, incurred or paid by Lender or Beneficiary in protecting Beneficiary’s interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or

other intended action by Beneficiary with respect to the Collateral sent to Grantor in accordance with the provisions hereof at least five (5) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Grantor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Beneficiary to the payment of the Debt in such priority and proportions as Beneficiary in its discretion shall deem proper. The principal place of business of Grantor (Debtor) is as set forth on page one hereof and the address of Beneficiary (Secured Party) is as set forth on page one hereof.

**Section 1.04     Fixture Filing.** Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Deed of Trust, and this Deed of Trust, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement naming Grantor as the Debtor and Beneficiary as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. As to all of the above described Property which is or which hereafter becomes a “fixture” under applicable law, this Deed of Trust constitutes a fixture filing under the Uniform Commercial Code. This Deed of Trust creates a security interest in the Collateral, and, to the extent the Collateral is not real property, this Deed of Trust constitutes a security agreement from Grantor to Beneficiary (for the benefit of Lender) under the Uniform Commercial Code.

Name of Debtor: BL Santa Fe, LLC

Debtor’s Address: 112 W. San Francisco, Suite 310, Santa Fe, New Mexico 87501

Debtor’s Jurisdiction of Organization: Delaware

Name of Secured Party: Fortress Credit Co LLC

Secured Party’s Address: c/o Fortress Investment Group LLC, 1345 Avenue of the Americas, 46th Floor, New York, New York 10105

Collateral Covered by Financing Statement: As described in Section 1.03

Place of Filing: To be filed in the Real Property Records of Santa Fe County, NM

Description of Real Property to which Collateral is Related: See attached Exhibit A

Owner of Record of the Real Property is: Grantor

**Section 1.05     Pledges of Monies Held.** Grantor hereby pledges to Beneficiary and grants Beneficiary (for the benefit of Lender) a security interest in any and all monies now or hereafter held by Beneficiary or Lender or on behalf of Beneficiary or Lender in connection with the Loan, including, without limitation, any sums deposited in the Accounts and the Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Deed of Trust.

**Section 1.06     Grants to Beneficiary.** This Deed of Trust and the grants, assignments and transfers made to Beneficiary in this Article I shall inure to Beneficiary (for the benefit of Lender).



## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Beneficiary and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Grantor shall well and truly pay and perform the Obligations (including the payment of the Debt) at the time and in the manner provided in this Deed of Trust, the Note, the Loan Agreement and the other Loan Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that all of Grantor's obligations to indemnify and hold harmless Beneficiary and Lender shall survive any such payment or release.

## ARTICLE II.

### DEBT AND OBLIGATIONS SECURED

**Section 2.01 Obligations.** This Deed of Trust and the grants, assignments and transfers made in Article I are given for the purpose of securing the Obligations, including, but not limited to, the Debt.

**Section 2.02 Other Obligations.** This Deed of Trust and the grants, assignments and transfers made in Article I are also given for the purpose of securing the following (collectively, the "*Other Obligations*"):

- (a) the performance of all other obligations of Grantor contained herein;
- (b) the performance of each obligation of Grantor contained in the Loan Agreement and in each other Loan Document; and
- (c) the performance of each obligation of Grantor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

**Section 2.03 Debt and Other Obligations.** Grantor's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "*Obligations*".

## ARTICLE III.

### GRANTOR COVENANTS

Grantor covenants and agrees that throughout the term of the Loan:

**Section 3.01 Payment of Debt.** Grantor will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Deed of Trust.

**Section 3.02 Incorporation by Reference.** All the covenants, conditions and agreements of Grantor 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. In the event of any conflict or other inconsistency between the provisions of the Loan Agreement and the provisions of this Deed of Trust, the provisions of the Loan Agreement shall control.

**Section 3.03 Insurance.** Grantor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Grantor and the Property as required pursuant to the Loan Agreement.

**Section 3.04 Maintenance of Property.** Grantor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property, once installed, shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Beneficiary or as otherwise may be expressly permitted under the Loan Agreement. Grantor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

**Section 3.05 Waste.** Grantor shall not commit or suffer any waste of the Property, or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value, use or utility of the Property or the security of this Deed of Trust, except to the extent any third party has the right to do so pursuant to a written agreement, a true and complete copy of which has been delivered to, accepted by and approved by Agent.

**Section 3.06 Payment for Labor and Materials.** Subject to Section 3.06(b) hereof, Grantor (i) will promptly pay when due all bills and costs for labor, materials and specifically fabricated materials ("***Labor and Material Costs***") incurred in connection with the Property, (ii) never permit to exist beyond the due date thereof in respect of the Property, or any part thereof, any Lien or security interest, even though inferior to the Liens and security interests created hereby and by the other Loan Documents, subject to Grantor's right to contest Liens as set forth in the Loan Agreement and herein, and (iii) never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests created hereby and by the other Loan Documents, except for the Permitted Encumbrances.

(a) After prior written notice to Beneficiary, Grantor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted at all times in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that: (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Deed of Trust or any of the other Loan Documents; (ii) Grantor is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt

affecting the Property; (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Grantor and from the Property or Grantor shall have paid all of the Labor and Material Costs under protest; (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Grantor is subject and shall not constitute a default thereunder; (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (vi) Grantor shall have either (A) furnished to Beneficiary a cash deposit equal to 150% of the amount of such contested Labor and Material Costs, or (B) obtained and filed an indemnity bond satisfactory to Beneficiary with a surety satisfactory to Beneficiary, in the amount of such Labor and Material Costs, plus in either of the foregoing cases a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith; (vii) such contest by Grantor shall not materially and adversely affect the ownership, use or occupancy of the Property; and (viii) such contest by Grantor shall not subject Beneficiary or Grantor to civil or criminal liability (other than the civil liability of Grantor for the amount of the Labor and Material Costs in question plus interest).

(b) Notwithstanding the foregoing, it shall not be a default under the terms and conditions of this Section 3.06 if, in respect of a mechanic's or materialman's lien asserted against the Property for Labor and Material Costs (each, a "***Mechanic's Lien***"): (i) Grantor shall have provided Beneficiary with written notice of such Mechanic's Lien within 10 days of obtaining knowledge thereof; (ii) within 20 days of obtaining knowledge of the filing of any Mechanic's Lien, Grantor shall have obtained and filed an indemnity bond satisfactory to Beneficiary with a surety satisfactory to Beneficiary, in the amount of 150% of the amount of the Labor and Material Costs which are the subject of such Mechanic's Lien, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith; (iii) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Deed of Trust or any of the other Loan Documents; (iv) Grantor shall at all times diligently prosecute the discharge of such Mechanic's Lien, and shall update Agent regarding the status of same from time to time upon Beneficiary's request; (v) neither the Property nor any part thereof nor any interest therein shall be in imminent danger of being sold, forfeited, terminated, canceled or lost; (vi) Grantor shall preclude the collection of, or other realization upon, any contested amount from the Property or any revenues from or interest in the Property; (vii) such contest by Grantor shall not materially and adversely affect the ownership, use or occupancy of the Property, (viii) such contest by Grantor shall not subject Agent or Grantor to civil or criminal liability (other than the civil liability of Grantor for the amount of the Lien in question plus interest); and (ix) Grantor has not consented to such Mechanic's Lien.

**Section 3.07     Intentionally Omitted.**

**Section 3.08     Performance of Other Agreements.** Grantor shall observe and perform each and every term, covenant and provision to be observed or performed by Grantor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto.

**ARTICLE IV.**

**OBLIGATIONS AND RELIANCES**

**Section 4.01     Relationship of Grantor and Beneficiary.** The relationship between Grantor and Beneficiary is solely that of debtor and creditor, and neither Beneficiary nor Lender has a fiduciary or other special relationship with Grantor, and no term or condition of any of the Loan Agreement, the Note, this Deed of Trust or the other Loan Documents shall be construed so as to deem the relationship between Grantor and Beneficiary or between Grantor and Lender to be other than that of debtor and creditor.

**Section 4.02     No Reliance on Beneficiary or Lender.** The general partners, members, principals and (if Grantor is a trust) beneficial owners of Grantor, are experienced in the ownership and operation of properties similar to the Property, and Grantor, Beneficiary and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Grantor is not relying on Beneficiary's or Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.03     No Beneficiary Obligations.**

(a) Notwithstanding the provisions of Section 1.01 or Section 1.02, Beneficiary is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to this Deed of Trust, the Loan Agreement, the Note or the other 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 Beneficiary nor Lender shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Beneficiary or Lender.

**Section 4.04     Reliance.** Grantor recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Deed of Trust and the other Loan Documents, Beneficiary and Lender are expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Beneficiary or Lender; that such reliance existed on the part of Beneficiary and Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and that Beneficiary would not be willing to accept this Deed of Trust in the absence of the warranties and representations as set forth in the Loan Agreement.

**ARTICLE V.**

**FURTHER ASSURANCES**

**Section 5.01     Recording of Deed of Trust, Etc.** Grantor forthwith upon the execution and delivery of this Deed of Trust and thereafter, from time to time, will cause this Deed of Trust and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or

recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Beneficiary (for the benefit of Lender) in, the Property. Grantor will pay all taxes, filing, registration or recording fees, and all reasonable and customary expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Deed of Trust, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

**Section 5.02     Further Acts, Etc.** Grantor will, at the cost of Grantor, and without expense to Beneficiary or Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Beneficiary shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Beneficiary the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey or assign to Beneficiary (for the benefit of Lender) or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust or for filing, registering or recording this Deed of Trust, or for complying with all Legal Requirements. Grantor, on written demand from Beneficiary, will execute and deliver, and in the event it shall fail, within ten (10) Business Days of such demand, to so execute and deliver, hereby authorizes Beneficiary to execute in the name of Grantor or without the signature of Grantor to the extent Beneficiary may lawfully do so, one or more financing statements to evidence more effectively the security interest of Beneficiary (for the benefit of Lender) in the Property. Grantor grants to Beneficiary (for the benefit of Lender) an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Beneficiary or Lender at law or in equity, including, without limitation, such rights and remedies available to Beneficiary or Lender pursuant to this Section 5.02.

**Section 5.03     Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Deed of Trust which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Beneficiary's interest in the Property, Grantor will pay the tax, with interest and penalties thereon, if any. If Beneficiary is advised by counsel chosen by it that the payment of tax by Grantor would be unlawful or taxable to Beneficiary or unenforceable or provide the basis for a defense of usury, then Beneficiary shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Grantor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any

part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Deed of Trust or the Debt. If such claim, credit or deduction shall be required by law, Beneficiary shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Deed of Trust, or any of the other Loan Documents or shall impose any other tax or charge on the same, Grantor will pay for the same, with interest and penalties thereon, if any.

**Section 5.04     Splitting of Security Instrument.** Subject to the terms and conditions contained in the Loan Agreement, this Deed of Trust and the Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Beneficiary, be split or divided into two or more notes and two or more deeds of trust, in such denominations as Beneficiary shall determine in its sole discretion (subject to the following sentence), each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Grantor, upon written request of Beneficiary, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Beneficiary, Lender and/or their designee or designees, substitute notes and mortgages in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses substantively similar to those contained herein and in the Note, and such other documents and instruments as may be required by Beneficiary.

## **ARTICLE VI.**

### **DUE ON SALE/ENCUMBRANCE**

**Section 6.01     Beneficiary Reliance.** Grantor acknowledges that Beneficiary and Lender have examined and relied on the experience of Grantor and the other Borrower Related Parties in agreeing to make the Loan, will continue to rely on Grantor's ownership of the Property as a means of maintaining the value of the Property as security for the payment and performance of the Obligations, including the repayment of the Debt. Grantor acknowledges that Beneficiary and Lender have a valid interest in maintaining the value of the Property so as to ensure that, should Grantor default in the payment and/or performance of the Obligations, including the repayment of the Debt, Beneficiary, on behalf of Lender, can recover the Debt by a sale of the Property.

**Section 6.02     No Transfer.** Grantor shall not permit or suffer any Transfer to occur except in accordance with the terms of the Loan Agreement.

## **ARTICLE VII.**

### **RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.01     Remedies.** Upon the occurrence and during the continuance of any Event of Default, Grantor agrees that Beneficiary may, at its option, take such lawful action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor and in and

to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) give such notice of default and of election to cause the Property to be sold as may be required by law or as may be necessary to cause Trustee to exercise the power of sale granted herein; Trustee shall then record and give such notice of Trustee's sale as then required by law and, after the expiration of such time as may be required by law, may sell the Property at the time and place specified in the notice of sale, as a whole or in separate parcels as directed by Beneficiary, or by Grantor to the extent required by law, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, all in accordance with applicable law. Trustee, from time to time, may postpone or continue the sale of all or any portion of the Property by public declaration at the time and place last appointed for the sale and no other notice of the postponed sale shall be required unless provided by applicable law. Upon any sale, Trustee shall deliver its deed conveying the property sold, without any covenant or warranty, expressed or implied, to the purchaser or purchasers at the sale. The recitals in such deed of any matters or facts shall be conclusive as to the accuracy thereof;
- (c) institute proceedings, judicial or through the Trustee, for the complete foreclosure of this Deed of Trust under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, Beneficiary being hereby expressly granted the power of to foreclose this Deed of Trust and sell the Property at public auction and convey the same to the purchaser in fee simple;
- (d) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Deed of Trust for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (e) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Grantor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:
- (f) (i) In connection with any sale or sales hereunder, Beneficiary shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Beneficiary shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal

Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;

(ii) Beneficiary shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Beneficiary so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Beneficiary and Beneficiary is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;

(iii) Should Beneficiary elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Beneficiary has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Beneficiary shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Grantor, Beneficiary at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Beneficiary may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iv) If the Property consists of several lots, parcels or items of property, Beneficiary shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Beneficiary designates in Beneficiary's sole discretion. Any Person, including Grantor or Beneficiary, may purchase at any sale hereunder. Should Beneficiary desire that more than one sale or other disposition of the Property be conducted, Beneficiary shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Beneficiary may designate, and no such sale shall terminate or otherwise affect the Lien of this Deed of Trust on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Beneficiary elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Grantor agrees to pay the costs and expenses of each such sale and of any judicial or other proceedings wherein such sale may be made;

(g) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, in the Loan Agreement or in the other Loan Documents or to enjoin Grantor from repeating or continuing a default hereunder;

(h) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Deed of Trust or the other Loan Documents;

(i) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, ex parte, without notice and without regard for the adequacy of the security for the



Debt and without regard for the solvency of Grantor, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof, Grantor hereby waiving any right to any hearing or notice of hearing prior to the appointment of a receiver;

(j) the license granted to Grantor under Section 1.02 hereof shall automatically be revoked and Beneficiary may, subject to and in accordance with applicable law, enter into or upon the Property, either personally or by a court-appointed receiver or by its agents, nominees or attorneys and dispossess Grantor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Grantor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Grantor agrees to surrender possession of the Property and of such books, records and accounts to Beneficiary upon demand, and thereupon Beneficiary may, subject to compliance with all provisions of applicable law (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Beneficiary deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Grantor with respect to the Property, whether in the name of Grantor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict Tenants and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Grantor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Grantor; (vi) require Grantor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, in default thereof, Grantor may be evicted by summary proceedings or otherwise; (vii) enter into contracts for the sale of Residences and Residence Sites and consummate the sale of any Residences and Residence Sites substantially in accordance with the contracts for the sale thereof; and (viii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, the payment of the Debt), in such order, priority and proportions as Beneficiary shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of any receiver or Beneficiary, and their respective counsel, agents and employees.

(k) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property, or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Grantor, at its sole cost and expense, to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Fixtures, the Equipment and/or the Personal Property sent to Grantor in accordance with the provisions hereof at least five (5) Business Days prior to such action, shall constitute commercially reasonable notice to Grantor;

(l) apply any sums then deposited or held in the Accounts, in escrow or otherwise by or on behalf of Beneficiary or Lender in accordance with the terms of the Loan Agreement, this Deed of Trust or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; and/or

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents (including, without limitation, any fees or other sums due in connection with the prepayment of the Loan) and advances made by Beneficiary pursuant to the terms of this Deed of Trust;

(m) pursue such other remedies as Lender or Beneficiary may have under applicable law; and/or

(n) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Beneficiary shall deem to be appropriate in its sole discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Deed of Trust shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.02 Application of Proceeds.** The purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by Beneficiary pursuant to the Note, this Deed of Trust or the other Loan Documents, may be applied by Beneficiary to the payment of the Obligations in such priority and proportions as Beneficiary in its discretion shall deem proper, to the extent consistent with law.

**Section 7.03 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, or if Grantor fails to make any payment or to do any act as herein provided, Beneficiary may, but without any obligation to do so and without notice to or demand on Grantor and without releasing Grantor from any obligation hereunder, make or do the same in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary is authorized to enter upon the Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Deed of Trust or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and expenses, to the extent permitted by law), with interest as provided in this Section 7.03, shall constitute a portion of the Debt and shall be due and payable to Beneficiary upon demand. All such costs and expenses incurred by Beneficiary or Lender in remedying any Event of Default or such failed payment or act or in appearing in, defending or bringing any such action or proceeding, as hereinabove provided, shall bear interest at the Default Rate, for the period beginning on the

first day after notice from Beneficiary that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Beneficiary or Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and to be secured by this Deed of Trust and the other Loan Documents and shall be immediately due and payable upon demand by Beneficiary therefor.

**Section 7.04     Actions and Proceedings.** Beneficiary shall have the right to appear in and defend any action or proceeding brought with respect to the Property and, if Grantor should fail to do so after prior written notice from Beneficiary and the expiration of fifteen (15) Business Days (or such lesser time as may be required to preserve Beneficiary's rights), to bring any action or proceeding to protect its interests in the Property, in the name and on behalf of Grantor, which Beneficiary, in its sole discretion, decides should be brought to protect its interest in the Property.

**Section 7.05     Recovery of Sums Required to be Paid.** Beneficiary shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any Default or Event of Default by Grantor existing at the time such earlier action was commenced.

**Section 7.06     Examination of Books and Records.** At reasonable times and upon reasonable prior written notice, Beneficiary, its agents, accountants and attorneys, shall have the right to examine the records, books and management and other papers of Grantor which reflect upon its financial condition, either at the Property or at any office regularly maintained by Grantor where such books and records are located. Beneficiary and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable prior written notice Beneficiary, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Grantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Grantor where the books and records are located. This Section 7.06 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

**Section 7.07     Other Rights, Etc.**

(a) The failure of Beneficiary or Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Grantor shall not be relieved of Grantor's obligations hereunder by reason of (i) the failure of Beneficiary or Lender to comply with any request of Grantor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Beneficiary or Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Deed of Trust or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Grantor, and neither Beneficiary nor Lender shall have any liability whatsoever for any decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force

is adequate as to the amount of 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 Property or collateral not in Beneficiary's possession.

(c) Beneficiary may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Beneficiary or Lender in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof, without prejudice to the right of Beneficiary thereafter to foreclose this Deed of Trust. The rights of Beneficiary and Lender under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Beneficiary nor Lender shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded by applicable law (whether at law or in equity).

**Section 7.08     Right to Release Any Portion of the Property.** Beneficiary may release any portion of the Property for such consideration as Beneficiary (on behalf of Lender) may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Deed of Trust, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and Beneficiary (for the benefit of Lender) may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Deed of Trust shall continue as a Lien and security interest in the remaining portion of the Property.

**Section 7.09     Violation of Laws.** Upon the occurrence and during the continuance of any Event of Default, if the Property is not in material compliance with all Legal Requirements, Beneficiary may in accordance with the Loan Agreement impose reasonable additional requirements upon Grantor in connection herewith, including, without limitation, monetary reserves or financial equivalents.

**Section 7.10     Recourse and Choice of Remedies.** Notwithstanding any other provision of this Deed of Trust, the Loan Agreement or the other Loan Documents, Beneficiary and the other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of (i) Grantor contained in the Loan Documents and (ii) to the extent that the obligation is one which is the responsibility of a guarantor or indemnitor pursuant to any guaranty or indemnity signed by such guarantor or indemnitor, any guarantor or indemnitor with respect to such instrument, in each case without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure, acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Beneficiary shall be entitled to pursue a deficiency judgment against (i) Grantor with respect to the Loan, and (ii) any guarantor or indemnitor with respect to their respective obligations under the Loan Documents (if any), in each case as applicable. Notwithstanding anything to the contrary set forth herein, (i) Grantor is fully and personally liable for the Obligations and (ii) any guarantor or indemnitor is fully and personally liable for their respective

obligations under any guaranty or indemnity agreement signed by any such guarantor or indemnitor. The liability of Grantor with respect to the Obligations is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Beneficiary from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Deed of Trust and/or the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Grantor with respect to the Obligations, whether or not an action is brought against any other Person and whether or not any other Person is joined in such action or actions. In addition, Agent shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

**Section 7.11 Right of Entry.** To the extent permitted by and in accordance with the Loan Documents and applicable law, Beneficiary and its agents shall have the right to enter and inspect the Property at all reasonable times upon reasonable prior notice to Grantor.

## **ARTICLE VIII.**

### **INDEMNIFICATION**

**Section 8.01 General Indemnification.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including, but not limited to, attorneys' fees and other costs of defense) (collectively, the "**Losses**") (specifically excluding any losses resulting from the illegal acts or willful misconduct of Indemnified Parties), imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Deed of Trust, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Obligations (including, but not limited to, the Debt) and the Note, the Loan Agreement, this Deed of Trust and/or any other Loan Document; (c) any and all lawful action that may be taken by Beneficiary or Lender in connection with the enforcement of the provisions of this Deed of Trust or the Loan Agreement or the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Grantor, any guarantor or indemnitor and/or any partner, member, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, non-use or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Grantor to perform or to be in compliance with any of the terms of this Deed of Trust; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions which may

be required in connection with this Deed of Trust, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Deed of Trust is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any of the Indemnified Parties of the provisions of this Article VIII; (k) any and all claims and demands whatsoever which may be asserted against Beneficiary or Lender 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 Lease or any contract for the sale of any Residences or Residence Sites; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Grantor (or any affiliate thereof) which may be payable in connection with the funding of the Loan or the sale of any Residences or Residence Sites; or (m) any misrepresentation made by Grantor in this Deed of Trust or in any other Loan Document. Any amounts payable to Beneficiary or Lender by reason of the application of this Section 8.01 shall become immediately due and payable and shall bear interest at the Default Rate from the date any Loss is sustained by Beneficiary or Lender until such amounts and any applicable interest are paid. For purposes of this Article VIII, the term “**Indemnified Parties**” means (A) Beneficiary, Lender and any Person who is or will have been involved in the origination of the Loan, (B) any Person who is or will have been involved in the servicing of the Loan secured hereby, including without limitation, the Servicer and the Construction Consultant, (C) any Person in whose name the encumbrance created by this Deed of Trust is or will have been recorded, (D) Persons who may hold or acquire or will have held a full or partial interest in the Loan, and (E) the respective directors, officers, shareholders, partners, members, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan, and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Beneficiary’s or Lender’s assets and business).

**Section 8.02     Mortgage and/or Intangible Tax.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Deed of Trust, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

**Section 8.03     ERISA Indemnification.** Grantor shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, attorneys’ fees and costs incurred in the investigation, defense and/or settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Beneficiary’s sole discretion) that Beneficiary or Lender may incur, directly or indirectly, as a result of a default under Section 5.2.9 of the Loan Agreement.

**Section 8.04     Duty to Defend; Attorneys’ Fees and Other Fees and Expenses.** Upon written request by any Indemnified Party, Grantor shall defend the Indemnified Party(ies) (if requested by any Indemnified Party, in the name of the Indemnified Party) against any claim for

which indemnification is required hereunder, by attorneys and other professionals approved by Beneficiary. Notwithstanding the foregoing, (a) upon the occurrence and during the continuation of an Event of Default, or (b) if any Indemnified Party determine that (i) Grantor's attorneys and professionals are not defending any claim or proceeding in a manner acceptable to Indemnified Parties, or (ii) their interests, in connection with any claims or proceedings, conflict with those of Grantor, such Indemnified Party may engage its own set of attorneys and other professionals for such claim to defend or assist them, Grantor's attorneys shall consult in all respects with Indemnified Parties' law firm with respect to such claim or proceeding and no compromise or settlement shall be entered without Beneficiary's consent, which consent shall not be unreasonably withheld. Upon demand, Grantor shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of the reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## **ARTICLE IX.**

### **WAIVERS**

**Section 9.01    Waiver of Counterclaim.** To the extent permitted by applicable law, Grantor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Beneficiary or Lender arising out of or in any way connected with this Deed of Trust, the Loan Agreement, the Note, any of the other Loan Documents or the Obligations.

**Section 9.02    Marshalling and Other Matters.** To the extent permitted by applicable law, Grantor hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Grantor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of Trust on behalf of Grantor, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust.

**Section 9.03    Waiver of Notice.** To the extent permitted by applicable law, Grantor shall not be entitled to any notices of any nature whatsoever from Beneficiary, except with respect to matters for which this Deed of Trust or the Loan Documents specifically and expressly provide for the giving of notice by Beneficiary to Grantor, and except with respect to matters for which Beneficiary is required by applicable law to give notice, and Grantor hereby expressly waives the right to receive any notice from Beneficiary with respect to any matter for which this Deed of Trust does not specifically and expressly provide for the giving of notice by Beneficiary to Grantor.

**Section 9.04    Waiver of Statute of Limitations.** To the extent permitted by applicable law, Grantor hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Debt).

**Section 9.05    Waiver of Jury Trial.** GRANTOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE LOAN AGREEMENT, THE NOTE, THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GRANTOR AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BENEFICIARY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY GRANTOR.

**Section 9.06    Survival.** The indemnifications made pursuant to Article VIII herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release or other termination of this Deed of Trust or any other Loan Document, (b) any assignment or other transfer of all or any portion of this Deed of Trust or any other Loan Document or Beneficiary's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (c) any exercise of Beneficiary's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Grantor or by Beneficiary following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Deed of Trust, the Loan Agreement, the Note or any other Loan Document, and/or (e) any act or omission that might otherwise be construed as a release or discharge of Grantor from the Obligations or any portion thereof.

## **ARTICLE X.**

### **EXCULPATION**

**Section 10.01    The Loan shall be fully recourse to Grantor.** The provisions of Section 9.4 of the Loan Agreement are hereby incorporated by reference into this Deed of Trust to the same extent and with the same force as if fully set forth herein.

## **ARTICLE XI.**

### **NOTICES**

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.



## **ARTICLE XII.**

### **APPLICABLE LAW**

#### **Section 12.01 Governing Law; Jurisdiction; Service of Process.**

(a) THIS DEED OF TRUST WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY GRANTOR IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS DEED OF TRUST, THE NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY OTHERWISE STATED) AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO (INCLUDING PROVISIONAL REMEDIES) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE LAND IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS DEED OF TRUST, THE NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THIS DEED OF TRUST, THE NOTE, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST BENEFICIARY, LENDER OR GRANTOR ARISING OUT OF OR RELATING TO THIS DEED OF TRUST MAY AT BENEFICIARY'S OR LENDER'S OPTION, AS APPLICABLE, BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND GRANTOR 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 GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. GRANTOR AGREES THAT SERVICE OF PROCESS UPON GRANTOR AT THE ADDRESS FOR GRANTOR SET FORTH IN THE LOAN AGREEMENT AND

WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO GRANTOR IN THE MANNER PROVIDED IN THE LOAN AGREEMENT SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON GRANTOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. GRANTOR (I) SHALL GIVE PROMPT NOTICE TO BENEFICIARY OF ANY CHANGE IN THE ADDRESS FOR GRANTOR SET FORTH IN THE LOAN AGREEMENT, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE AN AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK, AND (III) SHALL PROMPTLY DESIGNATE AN AUTHORIZED AGENT IF GRANTOR CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF BENEFICIARY OR LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST GRANTOR IN ANY OTHER JURISDICTION.

**Section 12.02 Usury Laws.** Notwithstanding anything to the contrary, (a) all agreements and communications between Grantor, Beneficiary and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Beneficiary or Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Grantor to Beneficiary or Lender, and (c) if through any contingency or event, Beneficiary receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Grantor to Lender, or if there is no such indebtedness, shall immediately be returned to Grantor.

**Section 12.03 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.

## **ARTICLE XIII.**

### **DEFINITIONS**

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Deed of Trust may be used interchangeably in the singular or plural form, the word “include” and its derivatives, whether or not so stated, mean by way of example and not by way of exclusion or limitation, the word “Grantor” shall mean “each Grantor and any subsequent owner or owners of the Property or any part thereof or any interest therein,” the word “Beneficiary” shall mean “Beneficiary and any successor or assign as Beneficiary,” the word “Lender” shall mean “Lender and any subsequent holder of the Note,” the word “Note” shall mean “the Note and any other evidence of indebtedness secured by this Deed of Trust,” the word

“Property” shall include any portion of the Property and any interest therein, and the phrases “attorneys’ fees”, “legal fees” and “counsel fees” shall include any and all documented, out-of-pocket attorneys’, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Beneficiary or Lender in protecting their interest in the Property, the Leases and/or the Rents and/or in enforcing their rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

#### **ARTICLE XIV.**

##### **MISCELLANEOUS PROVISIONS**

**Section 14.01 No Oral Change.** This Deed of Trust, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Grantor or Beneficiary, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

**Section 14.02 Successors and Assigns.**

(a) This Deed of Trust shall be binding upon, and shall inure to the benefit of, Grantor and Beneficiary and their respective successors and permitted assigns, as set forth in the Loan Agreement. Beneficiary shall have the right to assign or transfer its rights under this Deed of Trust in connection with any assignment of the Loan and the Loan Documents. Any assignee or transferee of Beneficiary shall be entitled to all the benefits afforded to Beneficiary under this Deed of Trust. Grantor shall not have the right to assign or transfer its rights or obligations under this Deed of Trust without the prior written consent of Beneficiary, as provided in the Loan Agreement, and any attempted assignment without such consent shall be null and void.

(b) Beneficiary shall at all times be the same Person that is “Agent” under the Loan Agreement. Written notice of resignation by Agent pursuant to the Loan Agreement shall also constitute notice of resignation as Beneficiary under this Security Agreement. Removal of Agent pursuant to any provision of the Loan Agreement shall also constitute removal as Beneficiary under this Deed of Trust. Appointment of a successor Agent pursuant to the Loan Agreement shall also constitute appointment of a successor Beneficiary under this Deed of Trust. Upon the acceptance of any appointment as Agent by a successor Agent under the Loan Agreement, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Beneficiary as the Beneficiary under this Deed of Trust, and the retiring or removed Beneficiary shall promptly (i) assign and transfer to such successor Beneficiary all of its right, title and interest in and to this Deed of Trust and the Property, and (ii) execute and deliver to such successor Beneficiary such assignments and amendments and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Beneficiary of the liens and security interests created hereunder, whereupon such retiring or removed Beneficiary shall be discharged from its duties and obligations under this Deed of Trust. After any retiring or removed Beneficiary’s resignation or removal hereunder as Beneficiary, the provisions of this Deed of Trust and the Loan Documents

shall inure to its benefit as to any actions taken or omitted to be taken by it under this Deed of Trust while it was Beneficiary hereunder.

**Section 14.03 Inapplicable Provisions.** If any provision of this Deed of Trust is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Deed of Trust, such provision shall be fully severable and this Deed of Trust shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Deed of Trust, and the remaining provisions of this Deed of Trust shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Deed of Trust, unless such continued effectiveness of this Deed of Trust, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

**Section 14.04 Headings, Etc.** The headings and captions of the various Sections of this Deed of Trust are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.05 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 Property, then, to the extent of the funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles and interests existing against the 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 payment, performance and discharge of the Obligations (including, but not limited to, the payment of the Debt).

**Section 14.06 Entire Agreement.** The Note, the Loan Agreement, this Deed of Trust and the other Loan Documents constitute the entire understanding and agreement between Grantor, Beneficiary and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Grantor, Beneficiary and Lender with respect thereto. Grantor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Beneficiary to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents.

**Section 14.07 Limitation on Beneficiary's and Lender's Responsibility.** No provision of this Deed of Trust shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Beneficiary or Lender, nor shall it operate to make Beneficiary or Lender responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Beneficiary or Lender a "mortgagee in possession."

**Section 14.08 Recitals.** The recitals hereof are a part hereof, form a basis for this Deed of Trust and shall be considered prima facie evidence of the facts and documents referred to therein.

**Section 14.09 Trustee; Successor Trustee.** Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except if the result of Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Property for debts contracted or liability or damages or damages incurred in the management or operation of the Property. 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 it hereunder or believed by it to be genuine. Trustee shall be entitled to reimbursement for actual expenses incurred by it in the performance of its duties hereunder and to reasonable compensation for such of its services hereunder as shall be rendered. Grantor will, from time to time, reimburse Trustee for and save and hold it harmless from and against any and all loss, cost, liability, damage and reasonable expense whatsoever incurred by it in the performance of its duties. All monies 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 monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder. Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to exercise the same when requested by Beneficiary or if for any or no reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall, without any formality or notice to Grantor or any other person, have full power to appoint a substitute trustee and, if Beneficiary so elects, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Each appointment and substitution shall be evidenced by an instrument in writing which shall recite the parties to, and the book and page of record of, this Deed of Trust, and the description of the real property herein described, which instrument, executed and acknowledged by Beneficiary, shall (i) be conclusive proof of the proper substitution and appointment of such successor Trustee or Trustees, (ii) duly assign and transfer all the estates, properties, rights, powers and trusts of Trustee so ceasing to act and (iii) be notice of such proper substitution and appointment to all parties in interest. In addition, such Trustee ceasing to act shall duly assign, transfer, and deliver any of the property and monies held by Trustee to the successor Trustee so appointed in its place. The Trustee may act in the execution of this trust and may authorize one or more parties to act on its behalf to perform the ministerial functions required of it hereunder, including without limitation, the transmittal and posting of any notices and it shall not be necessary for any Trustee to be present in person at any foreclosure sale.

**Section 14.10 Release.** The provisions of Section 2.5 of the Loan Agreement are incorporated herein by this reference. In the event of any conflict between this Deed of Trust and the Loan Agreement (including, without limitation, any of the provisions set forth in Article XV hereof), the Loan Agreement shall control.

## ARTICLE XV.

### ADDITIONAL PROVISIONS

**Section 15.01 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article XV and the terms and conditions of this Deed of Trust, the terms and conditions of this Article XV shall control and be binding.

**Section 15.02 Release.** Upon satisfaction in full of the Obligations, Beneficiary or, at Beneficiary's direction to the extent permitted by law, Trustee, shall release the Property, or that portion thereof then covered hereby, from the lien of this Deed of Trust, of record, as called for by NMSA 1978, §48-7-4 (1991). Otherwise, this Deed of Trust shall remain in full force and effect. The foregoing provisions shall not disturb the covenants, agreements, indemnifications and warranties in this Deed of Trust which expressly survive the release hereof.

**Section 15.03 Indemnity; Expenses.** Grantor will pay or reimburse Trustee and Beneficiary for all attorneys' fees, costs and expenses incurred by either of them in any suit, action, legal proceeding or dispute of any kind in which either of them is made a party or appears as party plaintiff or defendant, affecting the Debt, this Deed of Trust or the interest created herein, or the Property, or any appeal thereof, including, but not limited to, activities related to enforcement of the remedies of Beneficiary, activities related to protection of Beneficiary's collateral, any foreclosure action or exercise of the power of sale, any condemnation action involving the Property or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against Grantor, and any such amounts paid or incurred by Trustee or Beneficiary shall be added to the Debt and shall be secured by this Deed of Trust. The agreements of this subsection shall expressly survive in perpetuity satisfaction of this Deed of Trust and repayment of the Debt, any release, discharge or foreclosure of this Deed of Trust, conveyance by deed in lieu of foreclosure, sale, and any subsequent transfer by trustee's conveyance of the Property.

**Section 15.04 Foreclosure By Power of Sale.** Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall follow the provisions relating to a sale set out in this Deed of Trust.

**Section 15.05 Separate Sales.** Sale of less than the whole of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein, and subsequent sales may be made hereunder until all obligations secured hereby have been satisfied, or the entire Property sold, without defect or irregularity.

**Section 15.06 Release of and Resort to Collateral.** Beneficiary may release, regardless of consideration and without the necessity for any notice to a consent by the holder of any subordinate lien on the Property, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Property. For payment of the Indebtedness, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 15.07 Waiver of Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (i) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process or extension of time for payment, (ii) all notices of any Event of Default or of Trustee's election to exercise or its/his/her actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (iii) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 15.08 Discontinuance of Proceedings.** If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 15.09 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Deed of Trust nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity, shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Beneficiary or Trustee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 15.10 Concerning the Trustee.** (i) **Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions, to the maximum extent permitted by applicable law: (1) to select, employ and consult 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, (2) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his or her agents or attorneys, (3) (to the extent consistent with provisions in the Deed of Trust Act, NMSA 1978, §§48-10-1 to 48-10-21 (the "**Deed of Trust Act**"), including, without limitation, NMSA 1978, §48-10-10 (2006), to the effect that, except as specifically provided in the Deed of Trust Act, the trustee shall not delegate the duties of the trustee as provided in the Deed of Trust Act) to select and employ, in and about the execution of his or her duties hereunder, suitable accountants, engineers and other experts and agents, 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 or willful misconduct), and (4) any and all other lawful action that 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 Property for debts contracted for or liability or damages incurred in the management or operation

of the Property. 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 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. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties. The Trustee named herein or any successor Trustee shall be clothed with full power to act when action hereunder shall be required and to execute any conveyance of the Property. In the event that the substitution of Trustee shall become necessary for any reason, the substitution of one trustee in the place of the Trustee named herein shall be sufficient. The necessity of the Trustee herein named, or any successor to such Trustee, making oath or giving bond is expressly waived. Trustee or any one acting in Trustee's stead shall have, in such Person's discretion, authority to employ all proper agents and attorneys in the execution of this Deed of Trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the Property, should any be realized; and if no sale be made then Grantor hereby undertakes and agrees to pay the cost of such services rendered to Trustee.

**Section 15.11 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, and shall be segregated from any other moneys of Trustee.

**Section 15.12 Successor Trustee(s); Substitution of Trustee(s).** Trustee may resign by complying with the provisions of the Deed of Trust Act governing such resignation, including, without limitation, those set forth at NMSA §48-10-7(E) (2006), as it may be amended from time to time. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, 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. More specifically, subject to compliance with applicable provisions of the Deed of Trust Act, including, without limitation, those at NMSA 1978, §48-10-7 (2006), as it may be amended from time to time, Beneficiary, or any successor to Beneficiary, at its sole discretion, from time to time and with or without cause, may appoint a successor or successors to any Trustee named herein or acting hereunder, by executing, acknowledging, and recording in the office of the county clerk of the county where the Property is located, a notice of substitution conforming to the provisions of NMSA 1978, §48-10-7(C) (2006), as it may be amended from time to time, and giving notice of such substitution in the manner and to the parties specified in NMSA 1978, §48-10-7(C) (2006), as it may be amended from time to time. The successor Trustee or Trustees, shall, without conveyance from the predecessor Trustee, succeed to all of such predecessor Trustee's title, estate, rights, powers and duties hereunder. To the maximum extent permitted by applicable law, such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed on 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. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his or her 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. Any prior election to act jointly or severally shall not any or all of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of the provisions hereof.

**Section 15.13 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by 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 Grantor.

**Section 15.14 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, his or her 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 such Trustee's place.

**Section 15.15 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.

**Section 15.16 Loan Documents.** Grantor acknowledges that, notwithstanding any other provision of this Deed of Trust or any of the Loan Documents to the contrary (including without limitation any non-recourse provision under the Loan Documents) the obligations of (x) the guarantor under each of the Guaranty, the Carry Guaranty and the Guaranty of Completion, and (y) the indemnitors under the Environmental Indemnity are unlimited personal obligations the guarantors and/or indemnitors thereunder, as applicable, are not secured by this Deed of Trust or any other security instrument. Grantor acknowledges that Beneficiary is unwilling to accept such consequences and that Beneficiary would not make the Loan but for the personal unsecured liability undertaken by such parties thereunder.

**Section 15.17 Commitment or Promise to Loan Money Must Be Written.** Under NMSA 1978, §58-6-5 (1999), a contract, promise or commitment to loan money to or to grant, extend or renew credit or any modification thereof, in any amount greater than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) not primarily for personal, family or household purposes, made by a financial institution is not enforceable unless in writing and signed by the party(ies) to be charged, or by that party's authorized representatives.

**Section 15.18 All Rights and Remedies Under Deed of Trust Act.** All the rights, powers and remedies of a trustee and a beneficiary as provided in the Deed of Trust Act are incorporated by reference in this Deed of Trust as if the rights, powers and remedies were expressly provided in this Deed of Trust. Grantor represents and warrants to Beneficiary that the Real Property encumbered by this Deed of Trust qualifies as trust real estate. Grantor intends that Trustee and Beneficiary receive through the Loan Documents and this Deed of Trust all the rights, powers and remedies accorded a trustee and a beneficiary as provided in the Deed of Trust Act, whether or not such rights, powers and remedies are expressly granted or reserved in the Loan Documents or this Deed of Trust. Grantor specifically subjects the Property to the power of sale contained in this Deed of Trust. Beneficiary and Lender shall have the right to judicially foreclose this Deed of Trust in accordance with New Mexico law. At any sale of the Property made in the enforcement of the rights and remedies as provided in this Deed of Trust, Lender may, so far as may be lawful, purchase any part or parts of the Property offered at the sale and may make a credit bid. If Grantor fails or refuses to surrender possession of the Property after any Trustee's sale, Grantor shall become a tenant holding over after the end of the term without permission and subject to eviction by means of a forcible entry or unlawful detainer action. This remedy is not exclusive or in derogation of any other right or remedy available. To the extent any provision of this Deed of Trust is contrary to the terms of the Deed of Trust Act, the Deed of Trust Act shall control and be binding. In the event that any other provision in this Deed of Trust that is governed by the laws of the State of New Mexico shall be inconsistent with any applicable laws of the State of New Mexico, including New Mexico statutes and common law relating to the judicial foreclosure of this Deed of Trust, the provisions of such laws shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with such laws.

**Section 15.19 Maximum Indebtedness.** This Deed of Trust shall secure the Debt up to a maximum amount of twice the stated principal amount of the Note as addressed in recital paragraph A herein, plus interest thereon, as well as costs and attorneys' fees. This statement of maximum indebtedness secured is made to comply with NMSA 1978, §48-7-9 (1975), and does not in any way imply that Beneficiary or Lender is obligated at any time to make any future advances or lend all or any part of such maximum indebtedness, unless specifically so provided in the Loan Documents. This statement of the maximum indebtedness secured limits, pursuant to NMSA 1978, §48-7-9 (1975), only the total amount which may be, at any one time outstanding and secured on the terms herein set forth.

**Section 15.20 Redemption Period.** Any provision of this Deed of Trust that purports to fully waive the right of redemption or redemption laws is hereby deleted. Notwithstanding the above, if the Property, or any part thereof, is sold under the power of sale or at a foreclosure sale following a court ordered judicial foreclosure, the redemption period after such sale shall be one

month in lieu of nine months, as provided in NMSA 1978, §39-5-19 (1965) (judicial foreclosure sale) and in NMSA 1978, §48-10-16 (2007) (trustee's sale).

**Section 15.21 Indemnification Limitation.** To the extent, if at all, a court of competent jurisdiction determines that NMSA 1978, §56-7-1 (2005) applies to any indemnification provisions in this Assignment or in any other Loan Document, including certain types of insurance coverage as set forth in §56-7-1, such indemnification provisions shall be limited to the extent provided by the provisions of NMSA 1978, §56-7-1 (2005) to the extent such provisions are non-waivable.

**Section 15.22 Assignment of Rents Act.** In addition to all other rights under the terms of this Deed of Trust, Beneficiary and Lender shall be entitled to all rights and remedies provided under the Uniform Assignment of Rents Act, NMSA 1978, §56-15-1 (2011), *et. seq.*, as amended from time to time.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, THIS DEED OF TRUST has been executed under seal by Grantor as of the day and year first above written.

**GRANTOR:**

**BL SANTA FE, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Richard F. Holland

Title: President

**ACKNOWLEDGMENT**

State of New Mexico

County of Santa Fe

The foregoing instrument was acknowledged before me on May 31  
2019, by Richard as President of RL, a Delaware Limited Liability Company  
2 Hobbs Santa Fe, LLC

Witness my hand and official seal.

My commission expires: June 12, 2021

[Signature]  
Notary Public

## EXHIBIT A

### LEGAL DESCRIPTION

Parcel 1:

Resort Tract 4A and Resort Tract 4B, as shown on plat entitled "SUBDIVISION PLAT FOR BISHOP'S LODGE RESORT SUBDIVISION", lying within Sections 4, 5 and 6, T.17 N., R.10 E., N.M.P.M., filed in the office of the County Clerk, Santa Fe County, New Mexico, on December 11, 2002, in Plat Book 518, Pages 043-046, as Instrument No. 1238-326.

Parcel 2:

Tract 5 Open Space and Tract 6 Open Space, as shown on plat entitled "SUBDIVISION PLAT FOR BISHOP'S LODGE HILLS - PHASE 1", lying within Sections 4, 5 and 6, T.17 N., R.10 E., N.M.P.M., filed in the office of the County Clerk, Santa Fe County, New Mexico on December 11, 2002, in Plat Book 518, Pages 048-051, as Instrument No. 1238-330.

Parcel 3:

Non-exclusive rights of easement for pedestrians and equestrian trails in accord with Plats filed December 11, 2002, in Plat Book 518, page 048-051 as Instrument No. 1238-330 and Plat Book 518, pages 052-053 as Instrument No. 1238-331 and Plat Book 518, pages 054-055, as Instrument No. 1238-332, records of Santa Fe County, New Mexico, to the extent of and only for the duration as provided therein.

AND

Non-exclusive rights of easement for access, ingress, egress and pedestrian foot traffic and equestrian type use in accord with Grant of Reciprocal Easements Agreement filed January 28, 1998, recorded in Book 1450, Page 374, records of Santa Fe County, New Mexico, to the extent of and only for the duration as provided therein.

AND

Non-exclusive rights of easement for access, ingress, egress and pedestrian foot traffic and equestrian type use in accord with Grant of Reciprocal Easements Agreement filed January 28, 1998, recorded in Book 1450, Page 388, records of Santa Fe County, New Mexico, to the extent of and only for the duration as provided therein.

AND

Non-exclusive rights of easement for ingress and egress in accord with Agreement Re Easement filed April 24, 1978, recorded in Misc. Book 362, Page 192, as Document No. 419,122 , records of Santa Fe, New Mexico, to the extent of and only for the duration as provided therein.

AND

Non-exclusive rights of easement for pedestrian and equestrian use in accord with Exchange of Easement Agreement, recorded November 9, 2007, as Instrument No. 1505905, as affected by First Amendment To Exchange Of Easement Agreement, recorded July 23, 2010, as Instrument No. 1605913, records of Santa Fe County, New Mexico, to the extent of and only for the duration as provided therein.