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W2632845

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

REBEL FORCES, LLC
1355 Elk Hollow Road
North Salt Lake City, UT 84054
Attn: Amy Cowley

EN 2632845 PG 1 OF 17
ERNEST D ROWLEY, WEBER COUNTY RECORDER
30-APR-13 1142 AM FEE \$53.00 DEP TDT
REC FOR: RED BRIDGE CAPITAL LLC

(Space Above For Recorder's Use)

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

THE PARTIES TO THIS DEED OF TRUST WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (**Deed of Trust**), made as of March 15, 2013, are RED BRIDGE CAPITAL, LLC, a Utah limited liability company, (**Trustor**), REBEL FORCE, LLC, a Utah limited liability company (**Trustee**), and REBEL FORCE, LLC, a Utah limited liability company (**Beneficiary**).

ARTICLE 1. GRANT IN TRUST

- 1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of beneficiary, with power of sale and right of entry and possession, all of that real property located in the County of Weber, State of Utah, described on Exhibit A attached hereto, together with all buildings and other improvements, fixtures and equipment now or hereafter located on the real property, all right, title, interest, and privileges of Trustor in and to all streets, roads, and alleys used in connection with or pertaining to such real property, all water and water rights, (including stock or other evidence of ownership in irrigation, canal and other stock water companies), minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, all appurtenances, easements, rights and rights of way appurtenant or related thereto, and all air rights, development rights and credits, licenses and permits related to the real property. All interest or estate which Trustor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing are collectively referred to herein as the **"Property"**. The listing of specific rights or property shall not be interpreted as a limit of general terms.
- 1.2 **USE OF PROPERTY.** Trustor warrants that the Property is not used principally for agricultural or farming purposes.

ARTICLE 2. OBLIGATIONS SECURED

- 2.1 **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing: (a) the Payment of indebtedness of Trustor in the total principal amount of **One Million Dollars (\$1,000,000.00)** (the "**Loan**"), with interest thereon, according to the terms of that certain Promissory Note ("**Note**") dated March 6, 2013, executed by Trustor, and payable to Beneficiary, as lender; (b) payment of all sums advanced by Beneficiary with interest thereon equal to EIGHT AND ONE-HALF PERCENT (8.5%) (which rate of interest is hereinafter referred to as the "**Agreed Rate**"); (c) performance of every obligation of Trustor contained in the Loan Documents (as defined below); (d) performance of every obligation of Trustor contained in any agreement, document, or instrument now executed by Trustor reciting that the obligations thereunder are secured by this Deed of Trust (collectively the "**Secured Obligations**"); and (e) for the benefit of Beneficiary, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement or any other agreement, document or instrument by which the Trustor is bound or may be affected.

"Loan Documents" are defined as this Deed of Trust, the Note, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations. Any references herein to the *Utah Code Annotated*, shall be deemed to be a reference to the current version of such statutes together with any successor or replacement statute or law therefore.

- 2.2 **INCORPORATION.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges (if any), late charges and loan fees at any time accruing or assessed on any of the Secured Obligations. The obligations of Trustor under any environmental or hazardous indemnity agreement do not constitute Secured Obligations. The obligations of any guarantor under any guarantee of the Loan or of any of Borrower's obligations under the Loan Agreement, including but not limited to any repayment guarantee or completion guarantee, do not constitute Secured Obligations. All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of the Secured Obligations and the rate of interest on one or more Secured obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all present and future leases of the Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Property, whether such leases, licenses and agreements are now existing

or entered into after the date hereof (“Leases”) and (b) the rents, issues, deposits and profits of the Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases (“Payments”). The term “Leases” shall also include all guarantees of and security for the tenant’s performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary’s right to the Leases and Payments is not contingent upon and may be exercised without possession of the property.

3.2 **GRANT OF LICENSE.** Beneficiary confers upon Trustor a revocable license (“License”) to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the payments pursuant to the terms hereof without notice and without taking possession of the Property. All payments thereafter collected by Trustor shall be held by Trustor as trustee under a constructive trust for the benefit of Beneficiary. Trustor hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants’ undertakings under the Leases, and the tenants shall have no duty to inquire as to whether any Default has actually occurred or is then existing. Trustor hereby relieves the tenants from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary. Beneficiary may apply, in its sole discretion, any Payments so collected by Beneficiary against any Secured Obligation under the Loan Documents, whether existing on the date hereof or hereafter arising. Collection of any Payments by Beneficiary shall not cure or waive any Default or notice of Default or invalidate any acts done pursuant to such notice.

3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or any other parties, 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, invitee or other person; (d) responsible for or under any duty to produce rents or profits; (e) directly or indirectly liable to Trustor or any other person as a consequence of the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder or to perform or discharge any obligation, duty, or liability of Trustor arising under the Leases.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

4.1 **SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of

the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software therein, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on the Property; together with all rents (to the extent, if any, they are not real property); all inventory, accounts, cash receipts, deposit accounts, accounts receivable, contract rights, licenses, agreements, general intangibles, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the ownership, management, leasing or operation of the Property or any business now or hereafter conducted thereon by Debtor; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Beneficiary and/or any of its affiliate banks, whether or not disbursed; all funds deposited with Beneficiary and/or any of its affiliate banks pursuant to any loan agreement; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing.

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust is intended to constitute a fixture filing within the Uniform Commercial Code, as amended or recodified from time to time, for the state wherein the Property is located ("UCC"), and it is acknowledged and agreed that this Deed of Trust is a "construction mortgage" under such laws and under the applicable UCC for such state, which secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land.

- 4.2 **RIGHTS OF BENEFICIARY.** Upon the occurrence of a Default (as hereinafter defined) Beneficiary shall have all the rights of a "Secured Party" under the UCC. In addition to such rights, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interest of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Beneficiary may: (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; and/or (iii) sell, assign and deliver at any place or in

any lawful manner all or any part of the Collateral and bid and become the purchaser at any such sales. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under the UCC or other applicable law.

Trustor acknowledges and agrees that a disposition of the Collateral in accordance with Beneficiary's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that five days prior notice of such disposition is commercially reasonable notice. Trustor further agrees that any sale or other disposition of all or any portion of the Collateral may be applied by Beneficiary first to the reasonable expenses in connection therewith, including reasonable attorneys' fees and disbursements, and then to the payment of the Secured Obligations.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **PERFORMANCE OF SECURED OBLIGATIONS.** Trustor shall promptly pay and perform each Secured Obligation when due.
- 5.2 **TAXES AND ASSESSMENTS.** Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed upon the Property by any public authority or upon Beneficiary by reason of its interest in any Secured Obligation or in the Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3 **LIENS, ENCUMBRANCES AND CHARGES.** Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust.
- 5.4 **DUE ON SALE OR ENCUMBRANCE.** If the Property or any interest therein shall be sold, transferred, including, with out limitation, through sale or transfer, directly or indirectly, of a majority or controlling interest in the corporate stock or general partnership interests, limited liability partnership interests, or limited liability company interests of a managing member of Trustor, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, **THEN** Beneficiary, in its sole discretion, may at anytime thereafter declare all Secured Obligations immediately due and payable.
- 5.5 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**
 - a. The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (a) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of,

any interest in, the Property or Collateral; (b) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Property or Collateral; (c) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Property or Collateral; and (d) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in this Deed of Trust, Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order acceptable to Beneficiary, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.

- b. At its sole option, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may condition such application upon reasonable conditions, including, without limitation: (i) the deposit with Beneficiary of such additional funds which Beneficiary determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds acceptable to Beneficiary (the arrangement contained in the Loan Agreement for obtaining lien releases and disbursing loan funds shall be deemed reasonable with respect to disbursement of insurance or condemnation proceeds); (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence acceptable to Beneficiary (aa) that after completion of the work the income from the Property will be sufficient to pay all expenses and debt service for the Property; (bb) of the continuation of Leases acceptable to and required by Beneficiary; (cc) that upon completion of the work, the size, capacity and total value of the Property will be at least as great as it was before the damage or condemnation occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable, and, if such conditions have not been satisfied within thirty (30) days of receipt by Beneficiary of such insurance or condemnation proceeds, then Beneficiary may apply such insurance or condemnation proceeds to pay the Secured Obligations in such order and amounts as Beneficiary in its sole discretion may choose.

- 5.6 **DEFENCE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and Collateral and title to and right of possession of the Property and Collateral, the security hereof and the rights and powers of Beneficiary and Trustee hereunder against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of any material damage to the Property or Collateral and of any Condemnation offer or action.
- 5.7 **COMPENSATION; EXCULPATION; INDEMNIFICATION.** Trustor shall pay all statutory Trustee's fees and reimburse Trustee immediately upon demand for expenses in the administration of this trust, including attorneys' fees.
- 5.8 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Property at any reasonable time for the purpose of inspecting the Property and Collateral and ascertaining Trustor's compliance with the terms thereof.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean (a) any default under the Notes, or any of the other Loan Documents, including this Deed of Trust.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary and/or Trustee shall each have all the following rights and remedies:
- a. With or without notice, to declare all Secured Obligations immediately due and payable.
 - b. With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Property and do such acts and things as Beneficiary or Trustee deem necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance and to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (iv) to employ counsel, accountants, contractors and other appropriate persons.
 - c. To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a deed of trust or as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought

under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations.

- d. To apply to a court of competent jurisdiction for and to obtain appointment of a receiver of the Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment.
- e. To enter upon, possess, manage and operate the Property or any part thereof;
- f. To cause the Property to be sold by Trustee to satisfy the Secured Obligations through the exercise of the non-judicial power of sale, and neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Property is sold;
- g. To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both; and

Upon sale of the Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Property after foreclosure, but prior to resale, including, without limitation, the costs of any structural reports, hazardous waste reports or any remediation costs related thereto; (iv) anticipated discounts upon resale of the Property as a distressed or foreclosed property; and (v) such other factors or matters that Beneficiary deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (w) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (x) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (y) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in the Loan Documents or previously discussed between Trustor and Beneficiary; and (z) Beneficiary's credit bid may be higher or lower than any appraised value of the Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** After deducting all costs, fees and expenses of Trustee, and of this trust, including, without limitation, cost of evidence of title and attorneys' fees in connection with sale and costs and expenses of sale and of any judicial proceeding wherein such sale may be made, Trustee shall apply all proceeds of any foreclosure sale: (a) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest

specified in the Notes to be applicable on or after maturity or acceleration of the Notes; (b) to payment of all other Secured Obligations; and (c) the remainder, if any, to the person or persons legally entitled thereto.

- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under this Deed of Trust, less all costs and expenses incurred by Beneficiary or any receiver, including, without limitation, attorneys' fees, shall be applied in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary.
- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of or security interests created by this Deed of Trust.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEY'S FEES.** Trustor agrees to pay to Beneficiary immediately and without demand all costs and expenses incurred by Trustee and Beneficiary pursuant to this Article 6 (including, without limitation, court costs and attorneys' fees, whether incurred in litigation, including, without limitation, at trial, on appeal or in any bankruptcy or other proceeding, or not and the costs of any appraisals obtained in connection with a determination of the fair value of the Property). In addition, Trustor shall pay to Trustee all Trustee's fees hereunder and shall reimburse Trustee for all expenses incurred in the administration of this trust, including, without limitation, any attorneys' fees.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, to prepare, execute and file or record any document necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Property and Collateral, and upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporated by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to

Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property and Collateral and such further rights and agreements are incorporated herein by this reference.

- 7.2 **ATTORNEYS' FEES.** If the Notes are placed with an attorney for collection or if an attorney is engaged by Beneficiary to exercise rights or remedies or otherwise take actions to collect thereunder or under any other Loan Document, or if suit be instituted for collection, enforcement of rights and remedies, then in all events, Trustor agree(s) to pay all reasonable costs of collection, exercise of remedies or rights or other assertion of claims, including, but not limited to, reasonable attorneys' fees, whether or not court proceedings are instituted, and, where instituted, whether in district court, appellate court, or bankruptcy court.
- 7.3 **NO WAIVER.** No previous waiver and no failure or delay by Beneficiary in acting with respect to the terms of the Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under the Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of the Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of the Note and the terms of any other document related to the loan evidenced by the Note, the terms of the Note shall prevail.
- 7.4 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Property unless Beneficiary consents to a merger in writing.
- 7.5 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provide, however, that this Section does not waive or modify the provisions of the Section above titled "Due on Sale or Encumbrance".
- 7.6 **GOVERNING LAW.** This Deed of Trust shall be construed in accordance with the laws of the state where the Property is located, except to the extent that federal laws preempt the laws of such state.
- 7.7 **INCORPORATION.** Exhibit A, is attached hereto and is incorporated into this Deed of Trust by this reference.
- 7.8 **NOTICES.** All notices, demands or other communications required or permitted to be given pursuant to the provisions of this Deed of Trust shall be in writing and shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of Default may be sent by certified mail, return receipt requested, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective 3 days after mailing, if mailed by first class mail, and otherwise upon receipt at the address set forth below; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be their last known business address.

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove. Trustor shall forward to Beneficiary, without delay, any notices, letters or other communications delivered to the Property or to Trustor naming Beneficiary, "Lender" or any similar designation as addressee, or which could reasonably be deemed to affect the construction of the Improvements or the ability of Trustor to perform its obligations to Beneficiary under the Note.

Trustor requests a copy of any statutory notice of default and a copy of any statutory notice of sale be mailed to Trustor at the address set forth below.

- 7.9 **WAIVER OF MARSHALLING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property hereby waives all rights to have the Property and/or any other property marshaled upon any foreclosure of the lien of this Deed of Trust or on a foreclosure of any other lien securing the Secured Obligations. Beneficiary shall have the right to sell the Property and any or all of said other property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.10 **POWER OF SALE.** Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify the Trustee and request that the Trustee commence such proceedings.
- a. Upon receipt of such notice from the Beneficiary, the Trustee shall cause to be recorded, published and delivered to the Trustor such notice of default and election to sell as shall then be required by law and by this Deed of Trust. The Trustee shall, without demand on the Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by the Trustee in said notice of sale, either as a whole, or in separate lots or parcels or items as the Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. The Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, the Trustor, the Trustee or the Beneficiary, may purchase at such sale and the Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. In addition, the Beneficiary may credit bid at any such sale an amount up to and including the full amount of the indebtedness under the Loan Documents and hereunder, including, without limitation, accrued and unpaid interest, principal, charges, advances made hereunder and the Trustee's fees and expenses.
 - b. After deducting all costs, fees and expenses of the Trustee and of this Deed of Trust, including costs of evidence of title in connection with sale, the Trustee shall apply the proceeds of sale in accordance with the provisions of the Loan Documents.

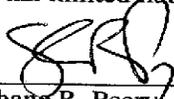
- c. Subject to the applicable provisions of Utah law, the Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.
- d. Beneficiary may from time to time rescind any notice of default or notice of sale before any Trustee's sale in accordance with the laws of the State of Utah. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring, or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the obligations of this Deed of Trust or secured hereby, nor otherwise affect any provision, covenant or condition of any Loan Document or any of the rights, obligations or remedies of Trustee or Beneficiary hereunder or thereunder.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"Trustor"

RED BRIDE CAPITAL, LLC
a Utah limited liability company

By: CHEROKEE & WALKER MANAGEMENT, LLC, a Utah limited liability company, its Manager

By: 
Name: Shane R. Peery
Title: Manager

By: 
Name: Paul K. Erickson
Title: Manager

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

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EXHIBIT A

That certain real property owned by Trustor and situated in the County of Weber, State of Utah and described as follows:

EXHIBIT A

That certain real property owned by Trustor and situated in the County of Weber, State of Utah and described as follows:

PARCEL 1 (15-009-007): 15-009-0007 ✓ 88 /

A PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 WEST, OF THE SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 1188 FEET SOUTH AND 589.71 FEET WEST FROM THE NORTHEAST CORNER OF SAID QUARTER SECTION; AND RUNNING THENCE SOUTH 9°17' EAST 930.83 FEET; THENCE NORTH 86°45' WEST 414.05 FEET; THENCE NORTH 19°30' WEST 239.3 FEET; THENCE NORTH 7°45' EAST 668.25 FEET; THENCE EAST 252.09 FEET TO THE PLACE OF BEGINNING.

PARCEL 3 (15-009-0010): ✓ 88 /

BEGINNING 110.3 RODS SOUTH AND 58 RODS WEST OF THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, IN WEBER COUNTY, UTAH; AND RUNNING THENCE WEST 24 RODS; THENCE NORTH 40.4 RODS; THENCE SOUTH 89°15' EAST 30.4 RODS; THENCE SOUTH 7°45' WEST 40.5 RODS TO THE PLACE OF BEGINNING.

PARCEL 5 (15-009-0011): ✓ 88 /

PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 WEST AND SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 1194.8 FEET SOUTH AND 588.6 FEET WEST FROM THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 3; RUNNING THENCE NORTH 89°15' WEST 742.95 FEET; THENCE NORTH 242.55 FEET; THENCE SOUTH 89°15' EAST 38.2 RODS; THENCE NORTH 1082.5 FEET; THENCE SOUTH 88°46' EAST TO A POINT THAT IS 28 RODS NORTH AND 682.73 FEET WEST AND SOUTH 1°52'51" WEST 320 FEET FROM THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 34; THENCE NORTH 1°52'51" WEST TO THE PLAIN CITY CORPORATE LIMITS LINE; THENCE SOUTH 89°17' EAST 60 FEET, MORE OR LESS; THENCE SOUTH 63°53' EAST 17 FEET, MORE OR LESS; THENCE SOUTH 1°39' WEST 1094 FEET; THENCE SOUTH 9°17' EAST 276 FEET TO THE PLACE OF BEGINNING.

SUBJECT TO AND TOGETHER WITH A RIGHT OF WAY FOR PURPOSES OF INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PROPERTY:

PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 WEST AND SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 1194.8 FEET SOUTH, 588.6 FEET WEST, NORTH 89°15' WEST 742.95 FEET AND NORTH 242.55 FEET FROM THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 3; RUNNING THENCE SOUTH 89°15' EAST 38.2 RODS; THENCE NORTH 1102.5 FEET TO PLAIN CITY LIMITS; THENCE SOUTH 89°17' EAST 20 FEET; THENCE SOUTH 1122.5 FEET; THENCE NORTH 89°15' WEST 650.3 FEET; THENCE SOUTH 614.15 FEET; THENCE WEST 20 FEET; THENCE NORTH 634.15 FEET; THENCE SOUTH 89°15' EAST 20 FEET TO THE POINT OF BEGINNING.

PARCEL 7 (15-009-0014): ✓ 88 /

PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING 78.8 RODS EAST AND 57 RODS SOUTH FROM THE NORTHWEST CORNER OF SAID SECTION 3; RUNNING THENCE EAST 38.2 RODS; THENCE NORTH 20.94 RODS; THENCE WEST 38.2 RODS; THENCE SOUTH 20.94 RODS TO THE PLACE OF BEGINNING.

PARCEL 8 (15-009-0032): ✓ 88 /

PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 165 FEET NORTH AND 37.3 RODS EAST OF THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER; THENCE NORTH $01^{\circ}16'29''$ EAST 625.15 FEET (AS PER BOUNDARY LINE AGREEMENT #1975141); THENCE EAST 1105.85 FEET TO A POINT WHICH IS 110.3 RODS SOUTH AND 58 RODS WEST FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH $19^{\circ}30'$ EAST 36 RODS; THENCE SOUTH $38^{\circ}45'$ EAST 5 RODS; THENCE WEST 1361.6 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL 9 (19-038-0042) ✓ 88 /

PART OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING ON THE SOUTH LINE OF 1975 NORTH STREET TO A POINT NORTH 462 FEET AND WEST 697.95 FEET TO AN EXISTING FENCE FROM THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 34; RUNNING THENCE SOUTH 300 FEET; MORE OR LESS, ALONG SAID FENCE, TO THE CORPORATE LIMITS LINE OF PLAIN CITY; THENCE ALONG CORPORATE LINE OF PLAIN CITY TOWN, SOUTH $89^{\circ}17'$ EAST 60 FEET, MORE OR LESS; THENCE SOUTH $63^{\circ}53'$ EAST TO A POINT SOUTH $1^{\circ}39'$ WEST 300 FEET, MORE OR LESS, FROM THE SOUTH LINE OF 1975 NORTH STREET; THENCE NORTH $1^{\circ}39'$ EAST 300 FEET TO THE SOUTH LINE OF 1975 NORTH STREET; THENCE NORTHWESTERLY ALONG SAID STREET TO THE POINT OF BEGINNING, SAID POINT BEING THE FENCE.

EXHIBIT A

That certain real property owned by Trustor and situated in the County of Weber, State of Utah and described as follows:

West Parcel

Beginning at a point on the section line, said point being North 89°34'10" West 696.71 feet along the section line from the North Quarter Corner of Section 3, Township 6 North, Range 2 West, Salt Lake Base and Meridian and running:

- thence North 01°11'24" East 354.88 feet;
- thence North 03°26'04" East 148.83 feet to the south line of 1975 North Street;
- thence South 84°14'07" East 88.70 feet along the south line of 1975 North Street;
- thence South 01°39'00" West 1422.72 feet;
- thence South 09°17'00" East 1166.18 feet;
- thence North 86°08'21" West 422.87 feet to the center line of 4 Mile Creek;
- thence South 37°13'19" West 19.46 feet along the centerline of 4 Mile Creek;
- thence South 15°15'29" East 187.66 feet along the centerline of 4 Mile Creek;
- thence South 20°39'53" West 82.18 feet along the centerline of 4 Mile Creek;
- thence South 75°41'54" West 327.71 feet along the centerline of 4 Mile Creek;
- thence South 64°31'14" West 59.77 feet along the centerline of 4 Mile Creek;
- thence South 88°25'16" West 770.65 feet along the centerline of 4 Mile Creek;
- thence North 66°23'07" West 80.45 feet along the centerline of 4 Mile Creek;
- thence North 01°16'29" East 625.17 feet to the south line of Plain View Subdivision;
- thence South 89°06'27" East 328.71 feet along the south line of Plain View Subdivision;
- thence South 88°27'54" East 330.01 feet;
- thence north 01°12'50" East 1252.79 feet to along and beyond the east line of Plain View

Subdivision;

- thence South 89°26'31" East 666.53 feet;
- thence North 01°11'24" East 562.26 feet to the section line and the point of beginning.

Contains: 1,949,192 square feet. 44,747 acres

15-009-0011, 0010, 0007, 0014, 0032 Pt ✓ EA