

Ent 512323 Bk 1389 Pg 1692 - 1734  
MARCY M. MURRAY, Recorder  
WASATCH COUNTY CORPORATION  
2021 Dec 17 09:56AM Fee: \$40.00 TC  
For: Cottonwood Title Insurance Agency, In  
ELECTRONICALLY RECORDED

WHEN RECORDED MAIL TO:

THE NORTHERN TRUST COMPANY  
Attn: Dennise Pentecostes, Vice President  
4747 Executive Drive, Suite 1100  
San Diego, CA 92121

MAIL TAX NOTICES TO:

R&D Benloch Ranch, LLC  
c/o Maxim Capital Management, LLC  
1055 Ashbury Street  
San Francisco, CA 94117

File No.: 149054-WHF

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

In Reference to Tax ID Number(s):

00-0020-9372, 00-0020-9572, 00-0021-5554, 00-0021-5555, 00-0021-5556 and 00-0021-5557

CTIA # 149054. WTHF

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

THE NORTHERN TRUST COMPANY  
Attn: Dennise Pentecostes, Vice President  
4747 Executive Drive, Suite 1100,  
San Diego, California 92121

**MAIL ALL TAX NOTICES TO:**  
R&D Benloch Ranch, LLC,  
881 Baxter Drive, Suite 100,  
South Jordan Utah, 84095

**APNs: 00-020-9372, 00-0020-9572, 00-0021-5554, 00-0021-555, 00-0021-5556, and 00-0021-5557**

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

NOTE TO COUNTY RECORDER: THIS INSTRUMENT IS TO BE RECORDED AND INDEXED AS A FIXTURE FILING AS WELL AS A DEED OF TRUST FOR PURPOSES OF THE UTAH UNIFORM COMMERCIAL CODE.

NOTICE TO BORROWER: THE LOAN SECURED BY THIS DEED OF TRUST PROVIDES FOR A VARIABLE INTEREST RATE AND BALLOON PAYMENT AT MATURITY

This Deed of Trust, Assignment of Leases and Rents, Fixture Filing, and Security Agreement (“Deed of Trust”) is made as of December 13, 2021, by **R&D BENLOCH RANCH, LLC, a Utah limited liability company**, as trustor (“Borrower”), whose address is 881 Baxter Drive, Suite 100, South Jordan Utah, 84095; for the benefit of **THE NORTHERN TRUST COMPANY**, an Illinois banking corporation, with a banking office at 4747 Executive Drive, Suite 1100, San Diego, California, 92121, as beneficiary (“Lender”), and **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, with an address of 1996 East 6400 South, Suite 120, Salt Lake City, Utah, 84121, as trustee (“Trustee”).

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower GRANTS, CONVEYS, WARRANTS, TRANSFERS AND ASSIGNS to Trustee, its successors in trust, and the Trustee’s assigns forever, the Property, with power of sale and right of entry, subject only to the Permitted Encumbrances, to have and to hold, and Borrower does hereby bind itself, its successors, and its assigns to warrant and forever defend the title to the Property to Trustee against anyone lawfully claiming it or any part of it; provided, however, that if the Indebtedness is paid in full and the Obligations are performed, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate; otherwise, they shall remain in full force and effect. As additional security for the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower grants to Lender a security interest in the Personalty, Fixtures, Leases, and Rents under the Utah Uniform Commercial Code. Borrower further grants, bargains, conveys, warrants, assigns, transfers, and sets over to Trustee, acting as both a trustee and an agent for Lender under this Deed of Trust, a security interest in and to all of Borrower’s right, title, and interest in, to, and under the Personalty, Fixtures, Leases, Rents, and Property (to the extent characterized as personal property) to

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secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

Borrower agrees to execute and deliver, from time to time, such further instruments, including, but not limited to, security agreements, assignments, and UCC financing statements, as may be requested by Lender to confirm the lien of this Deed of Trust on any of the Property.

Borrower further irrevocably grants, transfers, and assigns to Lender the Rents. This assignment of Rents is to be effective to create a present security interest in existing and future Rents of the Property.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS DEED OF TRUST, TO SECURE THE FULL AND TIMELY PERFORMANCE BY BORROWER OF EACH AND EVERY OBLIGATION, COVENANT, AND AGREEMENT OF BORROWER UNDER THE LOAN DOCUMENTS, AND AS ADDITIONAL CONSIDERATION FOR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, BORROWER HEREBY COVENANTS, REPRESENTS, AND AGREES AS FOLLOWS:

1. **Definitions.** For purposes of this Deed of Trust, each of the following terms shall have the following respective meanings:
  - a. **Anti-Terrorism Law.** Any law relating to terrorism or money laundering, including Executive Order No. 13224 and the USA Patriot Act.
  - b. **Appraisal Report.** That certain "Appraisal Report" report for the Property dated November 16, 2021 prepared by Valbridge Property Advisors and obtained by Lender with respect to the Property.
  - c. **Attorney Fees.** Any and all attorney fees, paralegal, and law clerk fees, including, without limitation, fees for advice, negotiation, consultation, judicial reference, and litigation at the pretrial, trial, and appellate levels, and in any bankruptcy proceedings, and reasonable attorney costs and expenses incurred or paid by Lender in protecting its interests in the Property, including, but not limited to, any action for waste, and enforcing its rights under this Deed of Trust.
  - d. **Borrower.** The named Borrower in this Deed of Trust and the obligor under the Note, whether or not named as Borrower in this Deed of Trust, the heirs, legatees, devisees, administrators, executors, successors in interest to the Property, and the assigns of any such person.
  - e. **Commodity Exchange Act.** The Commodity Exchange Act (7 U.S.C. § 1 et. seq.), as amended from time to time, and any successor statute.
  - f. **Credit Support Party.** Any person, or any persons severally, who now or hereafter guarantees payment or collection of all or any part of the Obligations or provides any collateral for the Obligations.
  - g. **Default Rate.** The default rate as provided in the Note.
  - h. **"Dollar"** and **"\$."** Lawful money of the United States of America unless otherwise specified.
  - i. **Event of Default.** An Event of Default as defined in Section 19 of this Deed of Trust.

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j. Environmental Indemnity Agreement. The Environmental Indemnity Agreement of the same date as this Deed of Trust executed between Borrower, Jeremy Ricks, on the one hand, and Lender, on the other hand.

k. Environmental Laws. Any Governmental Requirements pertaining to health, industrial hygiene, the environment, natural resources, pollution, health, safety, clean-up, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), soil, groundwater, and indoor and ambient air conditions, or the environmental conditions on, under, or about the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. §§ 9601 et seq.]; the Resource Conservation and Recovery Act [42 U.S.C.A. §§ 6901 et seq.]; the Superfund Amendments and Reauthorization Act of 1986 [Pub L 99-499, 100 Stat 1613]; the Hazardous Materials Transportation Act of 1985 [49 USC §§ 5101 et seq.]; the Solid Waste Disposal Act [42 U.S.C. §§ 6901 et seq.]; the Clean Water Act [33 U.S.C. §§ 1251 et seq.]; the Clean Air Act [42 U.S.C. §§ 7401 et seq.]; the Toxic Substances Control Act [15 U.S.C. §§ 2601 et seq.]; the Safe Drinking Water Act [42 U.S.C. §§ 300f et seq.]; the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. §§ 136 et seq.]; the Endangered Species Act [16 U.S.C. §§ 1531 et seq.]; the National Environmental Policy Act [42 U.S.C. §§ 4321 et seq.]; the Rivers and Harbors Appropriate Act of 1899 [33 U.S.C. §§ 401 et seq.]; the Refuse Act [33 U.S.C. §§ 407 et seq.]; the Oil Pollution Act of 1990 [33 U.S.C. §§ 2701 et seq.]; the Emergency Planning and Community Right-to-Know Act [42 U.S.C. §§ 11001 et seq.]; and the Occupational Safety and Health Act [29 U.S.C. §§ 651 et seq.]; and any analogous federal, state or local laws, any amendments thereto and regulations promulgated pursuant to said laws, together with all amendments from time to time of any of the foregoing.

l. Excluded Swap Obligation. With respect to any Borrower or Credit Support Party, any Swap Obligation if, and to the extent that, all or a portion of any guaranty thereof by such Borrower or Credit Support Party of, or the grant by such Borrower or Credit Support Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Borrower's or Credit Support Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Borrower or Credit Support Party or the grant of such security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such security interest or guaranty is or becomes illegal.

m. Executive Order No. 13224. Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001.

n. Fixtures. "Fixtures" is defined to mean, and includes, without limitation, all right, title, and interest of Borrower in and to all materials, supplies, equipment, apparatus, and other items now or later attached to, installed on or in the Land or the Improvements, or that in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the State of Utah, including the Utah Uniform Commercial Code. "Fixtures" includes, without limitation, all items of Personalty to the extent that they may be deemed Fixtures under Governmental Requirements.

o. Governmental Authority. Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

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p. Governmental Requirements. Any and all laws, statutes, codes, ordinances, regulations, enactments, decrees, judgments, and orders of any Governmental Authority.

q. Guarantor. Any Person, or any persons severally, other than Borrower, who now or hereafter guarantees payment or collection of all or any part of the Indebtedness.

r. Hazardous Substance. Any and all (i) chemicals, materials, or substances defined as or included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “solid waste” or words of similar import under any Environmental Laws); (ii) substances listed in the United States Department of Transportation Table (49 Code of Federal Regulations § 172.101 and amendments); (iii) asbestos-containing materials; (iv) polychlorinated biphenyl; (v) urea formaldehyde foam insulation; (vi) radon gas; (vii) underground storage tanks, whether empty, filled, or partially filled with any substance; (viii) petroleum and petroleum products, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any such mixture; and (ix) such other substances, materials, and wastes that are or become regulated under applicable local, state, or federal law, or that are classified as hazardous or toxic under any Governmental Requirements or that, even if not so regulated, are known to pose a hazard to the health and safety of the occupants of or persons about the Property or of real property adjacent to it. Despite the foregoing, the term Hazardous Substance does not include Permitted Materials.

s. Impositions. All real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges; charges imposed under any subdivision, planned unit development, or condominium declaration or restrictions; charges for any easement, license, or agreement maintained for the benefit of the Property, and all other taxes, charges, and assessments and any interest, costs, or penalties of any kind and nature that at any time before or after the execution of this Deed of Trust may be assessed, levied, or imposed on the Property or on its ownership, use, occupancy, or enjoyment.

t. Improvements. Any and all buildings, structures, improvements, fixtures, and appurtenances now and later placed on the Property, including, without limitation, all apparatus and equipment, whether or not physically affixed to the land or any building, which is used to provide or supply air cooling, air conditioning, heat, gas, water, light, power, refrigeration, ventilation, laundry, drying, dish washing, garbage disposal, or other services; and all elevators, escalators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, partitions, ducts, compressors, plumbing, storm windows, storm doors, screens, and paneling, all of which, including replacements and additions, shall conclusively be deemed to be affixed to and be part of the Property conveyed to Trustee under this Deed of Trust.

u. Indebtedness. The principal of, interest on, and all other amounts and payments due under or evidenced by the following:

i. The Note (including, without limitation, any prepayment premium, late payment, and other charges payable under the Note);

ii. All Swap Obligations, including without limitation those under any Swap Agreement(s);

iii. This Deed of Trust and all other Loan Documents (but specifically excluding any and all guaranties by any Guarantor, any Excluded Swap Obligations, and any environmental or other indemnity agreement executed in favor of Lender, including, without limitation: the Environmental Indemnity Agreement of even date herewith,

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executed by Borrower and Guarantors; and the Guaranty of even date herewith, executed by the Guarantors, which, any other provision in this Deed of Trust or any other Loan Documents to the contrary notwithstanding, are not secured by this Deed of Trust);

iv. All funds later advanced by Lender to or for the benefit of Borrower under any provision of any of the Loan Documents;

v. Any future loans or amounts advanced by Lender to Borrower when evidenced by a written instrument or document that specifically recites that the Obligations evidenced by such document are secured by the terms of this Deed of Trust, including, but not limited to, funds advanced to protect the security or priority of the Deed of Trust; and

vi. Any amendment, modification, extension, rearrangement, restatement, renewal, substitution, or replacement of any of the foregoing.

vii. The term "Indebtedness" specifically excludes any Excluded Swap Obligation.

v. Land. The real estate or any interest in it located in Wasatch County, Utah, commonly known as South of Highway, Heber, Wasatch County, Utah 84032, and as more fully described on **Exhibit A** attached to this Deed of Trust and made a part of it, together with all Improvements and Fixtures and all rights, titles, and interests appurtenant to it.

w. Leases. Any and all leases, subleases, licenses, concessions, or other agreements (written or verbal, now or later in effect) that grant a possessory interest in and to, or the right to extract, mine, reside in, sell, or use the Property, and all other agreements, including, but not limited to, utility contracts, maintenance agreements, and service contracts that in any way relate to the use, occupancy, operation, maintenance, enjoyment, or ownership of the Property, except any and all leases, subleases, or other agreements under which Borrower is granted a possessory interest in the Land.

x. Legal Requirement(s). Collectively, (a) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Borrower, any Credit Support Party (with respect to the Indebtedness or the Property), or the Property, including, but not limited to, those concerning its ownership, use, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction, (b) Borrower's or Credit Support Party's presently or subsequently effective bylaws and articles of incorporation, or any instruments establishing any partnership, limited partnership, joint venture, trust, limited liability company, or other form of business association (if either, both, or all, by any of same), (c) any and all Leases and other contracts (written or oral) of any nature to which Borrower or any Credit Support Party may be bound, and (d) any and all restrictions, reservations, conditions, easements, or other covenants or agreements now or later of record affecting the Property.

y. Lender. The named Lender in this Deed of Trust and the owner and holder (including a pledgee) of any Note, Indebtedness, or Obligations secured by this Deed of Trust, whether or not named as Lender in this Deed of Trust, and the heirs, legatees, devisees, administrators, executors, successors, and assigns of any such Person.

z. Lender Affiliate. Northern Trust Corporation or any direct or indirect subsidiary of Northern Trust Corporation (other than Lender itself).

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aa. Loan. The extension of credit made by Lender to Borrower under the terms of the Loan Documents.

bb. Loan Agreement. The Term Loan Agreement of the same date as this Deed of Trust executed between Borrower and Lender.

cc. Loan Documents. Collectively, this Deed of Trust, the Note, the Environmental Indemnity Agreement, the Security Agreement, the Guaranty, and all other instruments and agreements required to be executed by Borrower or any Guarantor in connection with the Loan.

dd. The term "margin stock" shall have the same meaning herein as in Federal Reserve Board Regulation U, or any successor regulation, as and if modified from time to time. The verbs "purchase" and "carry" when used with respect to margin stock shall have the same meaning as in such Regulation or successor and applicable authorities thereunder.

ee. Note. The Term Note Secured by Deed of Trust of even date herewith payable by Borrower to the order of Lender in the original maximum principal amount of Seven Million Seven Hundred Thousand Five Hundred and No/100 United States Dollars (\$7,700,500.00), evidencing the Loan, in such form as is acceptable to Lender, together with any and all rearrangements, extensions, renewals, substitutions, replacements, modifications, restatements, and amendments thereof. NOTICE TO BORROWER: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

ff. Obligation(s). Any and all of the covenants, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower to Lender or Trustee as set forth in the Loan Documents; any lease, sublease, or other agreement under which Borrower is granted a possessory interest in the Land; each obligation, covenant, and agreement of Borrower in the Loan Documents or in any other document executed by Borrower in connection with the Loan secured by this Deed of Trust whether set forth in or incorporated into the Loan Documents by reference; each and every monetary provision of all covenants, conditions, and restrictions, if any, pertaining to the Property and on Lender's written request, the enforcement by Borrower of any covenant by third parties to pay maintenance or other charges, if they have not been paid, or valid legal steps taken to enforce such payment after such written request is made; all agreements of Borrower to pay fees and charges to Lender whether or not set forth in this Deed of Trust; and charges, as allowed by law, when they are made for any statement regarding the obligations secured by this Deed of Trust.

Specific Exclusions: The Obligations specifically exclude the Environmental Indemnity Agreement of even date herewith, executed by Borrower and Guarantors, and the guaranties of any Guarantor in favor of Lender, which are not secured by this Deed of Trust, and further specifically exclude any Excluded Swap Obligation. Notwithstanding any other term contained in this Deed of Trust or the Loan Documents, none of Borrower's obligations under or pursuant to the Environmental Indemnity Agreement or any Guaranty are secured by the lien of this Deed of Trust. If Borrower is a natural person, the Property shall not secured any Obligations subject to Regulation Z of the Consumer Financial Protection Bureau unless the Truth in Lending disclosure pertaining to such Obligations discloses the Property as security for such Obligations. Proceeds of Obligations may not be used directly or indirectly to purchase or carry margin stock.

gg. Permitted Encumbrance(s). At any particular time, (a) liens for taxes, assessments, or governmental charges not then due and payable or not then delinquent; (b) liens, easements, encumbrances, and restrictions on the Property that, in advance of recordation of the Deed of Trust, are allowed by Lender to appear in Schedule B, with Parts I and II of an ALTA title policy to be issued to Lender following recordation of the Deed of Trust; and (c) liens in favor of or consented to in writing by Lender.

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hh. Permitted Materials. Materials customarily used in the maintenance of buildings, and cleaning materials, office products, and other materials customarily used in the operation of properties such as the Property and/or business operations such as those now conducted on the Property, provided that, in each case, such materials are stored, handled, used, and disposed of in compliance with applicable Environmental Laws.

ii. A “person” is any individual, corporation, company, limited liability company, voluntary association, joint venture, partnership, trust, estate, unincorporated organization, other entity, or government (or any agency, instrumentality, or political subdivision thereof).

jj. Personalty. All of the right, title, and interest of Borrower in and to all tangible and intangible personal property, whether now owned or later acquired by Borrower, including, but not limited to, water rights (to the extent they may constitute personal property), all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, letter-of-credit rights, deposit accounts, investment property, documents, minerals, crops, and timber (as those terms are defined in the Utah Uniform Commercial Code) and that are now or at any later time located on, attached to, installed, placed, used on, in connection with, or are required for such attachment, installation, placement, or use on the Land, the Improvements, Fixtures, or on other goods located on the Land or Improvements, together with all additions, accessions, accessories, amendments, modifications to the Land or Improvements, extensions, renewals, and enlargements and proceeds of the Land or Improvements, substitutions for, and income and profits from, the Land or Improvements. The Personalty includes, but is not limited to, all fire sprinklers and alarm systems; air conditioning, heating, refrigerating, electronic monitoring, maintenance, refuse and garbage equipment; chandeliers and other lighting fixtures; loan commitments, financing arrangements, bonds, construction contracts, leases, tenants’ security deposits, licenses, permits, sales contracts, option contracts, lease contracts, insurance policies, proceeds from policies, plans, specifications, surveys, books, records, funds, bank deposits; and all other intangible personal property. Personalty also includes any other portion or items of the Property that constitute personal property under the Utah Uniform Commercial Code.

kk. Prohibited Person. (i) A person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (ii) a person owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (iii) a person with whom Mortgagee is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a person who commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; (v) a person that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or at any other official publication of such list; and (vi) a person who is affiliated with a person described in clauses (i) – (v) above.

ll. Property. The Land, Improvements, Fixtures, Personalty, Leases, and Rents, together with:

i. All right, title, and interest (including any claim or demand or demand in law or equity) that Borrower now has or may later acquire in or to such Property; all easements, rights, privileges, tenements, hereditaments, and appurtenances belonging or in any way appertaining to the Property; all of the estate, right, title, interest, claim, demand, reversion, or remainder of Borrower in or to the Property, either at law or in equity, in possession or expectancy, now or later acquired; all crops growing or to be grown on the Property; all development rights or credits and air rights; all water and water rights



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(whether or not appurtenant to the Property) and shares of stock pertaining to such water or water rights, ownership of which affects the Property; all minerals, oil, gas, and other hydrocarbon substances and rights thereto in, on, under, or upon the Property and all royalties and profits from any such rights or shares of stock; all right, title, and interest of Borrower in and to any streets, ways, alleys, strips, or gores of land adjoining the Land or any part of it that Borrower now owns or at any time later acquires and all adjacent lands within enclosures or occupied by buildings partly situated on the Property;

ii. All intangible property and rights relating to the Property or its operation or used in connection with it, including, without limitation, permits, licenses, plans, specifications, construction contracts, subcontracts, bids, deposits for utility services, installations, refunds due Borrower, trade names, trademarks, and service marks;

iii. All of the right, title, and interest of Borrower in and to the land lying in the bed of any street, road, highway, or avenue in front of or adjoining the Land;

iv. Any and all awards previously made or later to be made by any Governmental Authority to the present and all subsequent owners of the Property that may be made with respect to the Property as a result of the exercise of the right of eminent domain, the alteration of the grade of any street, or any other injury to or decrease of value of the Property, which award or awards are assigned to Lender and Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of any such award or awards from the authorities making them and to give proper receipts and acquittances for them, and to apply them as provided in Section 5;

v. All certificates of deposit of Borrower in Lender's possession and all bank accounts of Borrower with Lender and their proceeds, and all deposits of Borrower with any Governmental Authority and/or public utility company that relate to the ownership of the Property;

vi. All Leases of the Property or any part of it now or later entered into and all right, title, and interest of Borrower under such Leases, including cash or securities deposited by the tenants to secure performance of their obligations under such Leases (whether such cash or securities are to be held until the expiration of the terms of such Leases or applied to one or more of the installments of rent coming due immediately before the expiration of such terms), all rights to all insurance proceeds and unearned insurance premiums arising from or relating to the Property, all other rights and easements of Borrower now or later existing pertaining to the use and enjoyment of the Property, and all right, title, and interest of Borrower in and to all declarations of covenants, conditions, and restrictions as may affect or otherwise relate to the Property;

vii. Any and all proceeds of any insurance policies covering the Property, whether or not such insurance policies were required by Lender as a condition of making the loan secured by this Deed of Trust or are required to be maintained by Borrower as provided below in this Deed of Trust; which proceeds are assigned to Lender, and Lender, at its option, is authorized, directed, and empowered to collect and receive the proceeds of such insurance policies from the insurers issuing the same and to give proper receipts and acquittances for such policies, and to apply the same as provided below;

viii. All plans and specifications for the Improvements; all contracts and subcontracts relating to the Improvements; all deposits (including tenants' security

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deposits; provided, however, that if Lender acquires possession or control of tenants' security deposits Lender shall use the tenants' security deposits only for such purposes as Governmental Requirements permit), funds, accounts, contract rights, instruments, documents, general intangibles, and notes or chattel paper arising from or in connection with the Land or other Property; all permits, licenses, certificates, and other rights and privileges obtained in connection with the Land or other Property; all soils reports, engineering reports, land planning maps, drawings, construction contracts, notes, drafts, documents, engineering and architectural drawings, letters of credit, bonds, surety bonds, any other intangible rights relating to the Land and Improvements, surveys, and other reports, exhibits, or plans used or to be used in connection with the construction, planning, operation, or maintenance of the Land and Improvements and all amendments and modifications; all proceeds arising from or by virtue of the sale, lease, grant of option, or other disposition of all or any part of the Land, Fixtures, Personalty, or other Property (consent to same is not granted or implied); and all proceeds (including premium refunds) payable or to be payable under each insurance policy relating to the Land, Fixtures, Personalty, or other Property;

ix. All trade names, trademarks, symbols, service marks, and goodwill associated with the Property and any and all state and federal applications and registrations now or later used in connection with the use or operation of the Property;

x. All tax refunds, bills, notes, inventories, accounts and charges receivable, credits, claims, securities, and documents of all kinds, and all instruments, contract rights, general intangibles, bonds and deposits, and all proceeds and products of the Property;

xi. All money or other personal property of Borrower (including, without limitation, any instrument, deposit account, general intangible, or chattel paper, as defined in the Utah Uniform Commercial Code) previously or later delivered to, deposited with, or that otherwise comes into Lender's possession;

xii. All accounts, contract rights, chattel paper, documents, instruments, books, records, claims against third parties, money, securities, drafts, notes, proceeds, and other items relating to the Property;

xiii. All construction, supply, engineering, and architectural contracts executed and to be executed by Borrower for the construction of Improvements; and

xiv. All proceeds of any of the foregoing.

As used in this Deed of Trust, "Property" is expressly defined as meaning all or, when the context permits or requires, any parcel, unit, or portion of it and all or, when the context permits or requires, any interest in it.

mm. Receiver. Any trustee, receiver, custodian, fiscal agent, liquidator, or similar officer.

nn. Related Party(ies). Any Credit Support Party, any Subsidiary, and, in addition: (i) as to any Borrower which is a natural person, trusts for the benefit of Borrower; and (ii) as to any Borrower which is not a natural person, to the extent applicable, any general or limited partner, controlling shareholder, joint venture, member or manager, of Borrower.

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oo. Rents. All rents, issues, revenues, income, proceeds, royalties, profits, license fees, prepaid municipal and utility fees, bonds, and other benefits to which Borrower or the record title owner of the Property may now or later be entitled from or which are derived from the Property, including, without limitation, sale proceeds of the Property; any room or space sales or rentals from the Property; and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting, or otherwise enjoying or using the Property.

pp. Security Agreement. The Security Agreement of the same date as this Deed of Trust executed by Borrower in favor of Lender.

qq. Subsidiary. Any corporation, partnership, limited liability company, joint venture, trust, or other legal entity of which Borrower owns directly or indirectly 50% or more of the outstanding voting stock or interest, or of which Borrower has effective control, by contract or otherwise.

rr. Swap Agreement. Any agreement, document or instrument executed or delivered by Borrower or any Credit Support Party pertaining to any Swap Obligation.

ss. Swap Obligation. With respect to Borrower or any Credit Support Party, any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1(a)47 of the Commodity Exchange Act, as amended from time to time, if entered into with Lender or any Lender Affiliate.

tt. Trust Agreement. If any party comprising Borrower is a trustee(s), the governing trust agreement and/or instruments governing the trust, as modified from time to time, and all related documents and instruments, and Borrower also refers to the trustee(s) in its capacity as such and the trust individually and collectively.

uu. UCC or the Utah Uniform Commercial Code. Utah Code Annotated Title 70A, also known as Utah Uniform Commercial Code.

vv. USA Patriot Act. The “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (Public Law 107-56, signed into law on October 26, 2001), as amended from time to time.

Any terms not otherwise defined in this Deed of Trust shall have the meaning given them in the Loan Agreement.

2. **Repair and Maintenance of Property**. Repair and Maintenance of Property. Borrower shall (a) keep the Property in good condition and repair; (b) not substantially alter, remove, or demolish the Property or any of the Improvements except when incident to the replacement of Fixtures, equipment, machinery, or appliances with items of like kind; (c) restore and repair to the equivalent of its original condition all or any part of the Property that may be damaged or destroyed, including, but not limited to, damage from termites and dry rot, soil subsidence, and construction defects, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair, and regardless of whether Lender permits the use of any insurance proceeds to be used for restoration under Section 5 of this Deed of Trust; (d) pay when due all claims for labor performed and materials furnished in connection with the Property and not permit any mechanics’ or materialman’s lien to arise against the Property; provided, however, nothing contained in this Deed of Trust shall require Borrower to pay any claims for labor, materials, or services that Borrower, in good faith, disputes and that Borrower, at its own expense, is currently and diligently contesting, so long as within the earlier of ten (10) days after the notice of the filing of any claim or lien against the Property or the time prescribed by law so as not to place the Property in jeopardy of a lien or forfeiture, Borrower

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shall either (i) record a surety bond sufficient to release said claim or lien and promptly give notice of such recordation to the lienholder or claimant, or (ii) make other arrangements satisfactory to Lender; and in no event shall Lender be required to extend the maturity date of the Loan by reason of Borrower's failure to pay such claims; (e) comply with all laws affecting the Property or requiring that any alterations, repairs, replacements, or improvements be made on it; (f) not commit or permit waste on or to the Property, or commit, suffer, or permit any act or violation of law to occur on it; (g) not abandon the Property; (h) cultivate, irrigate, fertilize, fumigate, and prune in accordance with prudent agricultural practices; (i) if required by Lender, provide for management satisfactory to Lender under a management contract approved by Lender; (j) notify Lender in writing of any condition at or on the Property that may have a significant and measurable effect on its market value; (k) if the Property is rental property, generally operate and maintain it in such manner as to realize its maximum rental potential; and (l) do all other things that the character or use of the Property may reasonably render necessary to maintain it in the same condition (reasonable wear and tear expected) as existed at the date of this Deed of Trust.

3. **Use of Property.** Unless otherwise required by Governmental Requirements or unless Lender otherwise consents in writing in advance of any changes, Borrower shall not allow changes in the use of the Property from that which is contemplated by Borrower and Lender at the time of execution of this Deed of Trust, as specified in the Loan Documents. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

4. **Insurance.**

a. **Maintenance of Insurance.** Borrower will maintain fire and other risk insurance, public liability insurance, and such other commercially reasonable insurance in form, amounts and coverages as Lender may require with respect to Borrower's properties and operations; provided, however, that property insurance must be maintained in an amount at least equal to the outstanding balance of the Loan plus any other amounts due, with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other Person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loan, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may reasonably require. The Mortgagee Clause shall reflect the following address: Northern Trust Company, ISAOA, P.O. Box 7060, Troy, MI 48007-7060.

b. **Insurance Reports.** Borrower will furnish to Lender upon request reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (i) the name of the insurer; (ii) the risks insured; (iii) the amount of the policy; (iv) the properties insured; (v) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (vi) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any collateral. The cost of such appraisal shall be paid by Borrower.

c. **Increased Coverage.** If Lender reasonably determines that the limits of any insurance carried by Borrower are inadequate or that additional coverage is required, Borrower shall, within thirty (30) days after written notice from Lender, procure such additional coverage as Lender may require in Lender's sole and absolute discretion.

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d. No Separate Insurance. Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section 4 unless endorsed in favor of Trustee and Lender as required by this Section and otherwise approved by Lender in all respects.

e. Transfer of Title. In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Obligations and the Indebtedness, all right, title, and interest of Borrower in and to all insurance policies required under this Section 4 or otherwise then in force with respect to the Property and all proceeds payable under, and unearned premiums on, such policies shall immediately vest in the purchaser or other transferee of the Property.

f. Approval Not Warranty. No approval by Lender of any insurer may be construed to be a representation, certification, or warranty of its solvency and no approval by Lender as to the amount, type, or form of any insurance may be construed to be a representation, certification, or warranty of its sufficiency.

g. Lender's Right to Obtain. Borrower shall deliver to Lender original policies or certificates evidencing such insurance at least thirty (30) days before the existing policies expire. If any such policy is not so delivered to Lender or if any such policy is canceled, whether or not Lender has the policy in its possession, and no reinstatement or replacement policy is received before termination of insurance, Lender, after ten (10) days' written notice to Borrower, unless Lender believes such insurance is necessary to immediately protect and/or preserve the Property, may (but is not obligated to) obtain such insurance insuring only Lender and Trustee with such company as Lender may deem satisfactory, and pay the premium for such policies, and the amount of any premium so paid shall be charged to and promptly paid by Borrower or, at Lender's option, may be added to the Indebtedness. Borrower acknowledges that, if Lender obtains insurance, it is for the sole benefit of Lender and Trustee, and Borrower shall not rely on any insurance obtained by Lender to protect Borrower in any way.

h. Duty to Restore After Casualty. If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) results in damage to or loss or destruction of the Property, Borrower shall immediately give notice of such loss or damage to Lender and, if Lender so instructs, shall promptly, at Borrower's sole cost and expense, regardless of whether any insurance proceeds will be sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace, and rebuild the Property as nearly as possible to its value, condition, and character immediately before the damage, loss, or destruction.

## 5. Condemnation and Insurance Proceeds.

a. Assignment to Lender. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Property, or any part of it, or for conveyance in lieu of condemnation, are assigned to and shall be paid to Lender, who shall hold them in a non-interest-bearing general account, regardless of whether Lender's security is impaired. All causes of action, whether accrued before or after the date of this Deed of Trust, of all types for damages or injury to the Property or any part of it, or in connection with any transaction financed by funds lent to Borrower by Lender and secured by this Deed of Trust, or in connection with or affecting the Property or any part of it, including, without limitation, causes of action arising in tort or contract or in equity, are assigned to Lender as additional security, and the proceeds shall be paid to Lender. If, in Lender's reasonable judgment, Borrower is not diligently pursuing collection of such proceeds or taking other actions to adequately protect the Property, then Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement

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of such action. Borrower shall notify Lender in writing immediately on obtaining knowledge of any casualty damage to the Property or damage in any other manner in excess of \$100,000 or knowledge of the institution of any proceeding relating to condemnation or other taking of or damage or injury to all or any portion of the Property. Lender, in its sole and absolute discretion, may participate in any such proceedings and may join Borrower in adjusting any loss covered by insurance. Borrower covenants and agrees with Lender, at Lender's request, to make, execute, and deliver, at Borrower's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards, causes of action, or claims of damages or proceeds to Lender free, clear, and discharged of any and all encumbrances of any kind or nature;

b. Insurance Payments. All compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Lender may become entitled with respect to the Property if any damage or injury occurs to the Property, other than by a partial condemnation or other partial taking of the Property, shall be paid over to Lender and shall be applied first toward reimbursement of all reasonable costs and expenses of Lender in connection with their recovery and disbursement, and shall then be applied as follows:

i. Lender shall consent to the application of such payments to the restoration of the Property so damaged only if Borrower has met all the following conditions (a breach of one of which shall constitute a default under this Deed of Trust, the Note, and any Loan Documents): (a) Borrower is not in default under any of the terms, covenants, and conditions of the Loan Documents; (b) all then-existing Leases affected in any way by such damage will continue in full force and effect or loss of rents insurance acceptable to Lender is in place; (c) Lender is satisfied that the insurance or award proceeds, plus any sums added by Borrower, shall be sufficient to fully restore and rebuild the Property under then current Governmental Requirements; (d) within ninety (90) days after the damage to the Property, Borrower presents to Lender a restoration plan satisfactory to Lender and any local planning department, which includes cost estimates and schedules; (e) construction and completion of restoration and rebuilding of the Property shall be completed in accordance with plans and specifications and drawings submitted to Lender within seventy-five (75) days after receipt by Lender of the restoration plan and thereafter approved by Lender, which plans, specifications, and drawings shall not be substantially modified, changed, or revised without Lender's prior written consent; (f) within one hundred five (105) days after such damage, Borrower and a licensed contractor satisfactory to Lender enter into a fixed price or guaranteed maximum price contract satisfactory to Lender, providing for complete restoration in accordance with such restoration plan for an amount not to exceed the amount of funds held or to be held by Lender; (g) all restoration of the Improvements so damaged or destroyed shall be made with reasonable promptness and shall be of a value at least equal to the value of the Improvements so damaged or destroyed before such damage or destruction; (h) Lender reasonably determines that there is an identified source (whether from income from the Property, rental loss insurance, or another source) sufficient to pay all debt service and operating expenses of the Property during its restoration as required above; and (i) any and all funds that are made available for restoration and rebuilding under this Section 5 shall be disbursed, at Lender's sole and absolute discretion to Lender, through Lender, the Trustee, or a title insurance or trust company satisfactory to Lender, in accordance with standard construction lending practices, including a reasonable fee payable to Lender from such funds and, if Lender requests, mechanics' lien waivers and title insurance date-downs, and the provision of payment and performance bonds by Borrower, or in any other manner approved by Lender in Lender's sole and absolute discretion; or

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ii. If fewer than all conditions (a) through (i) in Section 5.b.i. are satisfied, then such payments shall be applied in the sole and absolute discretion of Lender (a) to the payment or prepayment, with any applicable prepayment premium, of any Indebtedness secured by this Deed of Trust in such order as Lender may determine, or (b) to the reimbursement of Borrower's expenses incurred in the rebuilding and restoration of the Property. If Lender elects under this Section 5.b.ii to make any funds available to restore the Property, then all of conditions (a) through (i) in Section 5.b.i. shall apply, except for such conditions that Lender, in its sole and absolute discretion, may waive.

c. Material Loss Not Covered. If any material part of the Property is damaged or destroyed and the loss, measured by the replacement cost of the Improvements according to then current Governmental Requirements, is not adequately covered by insurance proceeds collected or in the process of collection, Borrower shall deposit with Lender, within thirty (30) days after Lender's request, the amount of the loss not so covered.

d. Condemnation Payments. To the extent permitted by law, Lender may elect to require that all or any portion of any compensation, awards, proceeds, damages, claims, insurance recoveries, rights of action, and payments that Borrower may receive or to which Borrower may become entitled with respect to the Property in the event of a condemnation or other total taking of all or any portion of the Property, be applied to the Indebtedness and to the repayment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation proceedings or recovery.

e. No Cure of Waiver of Default. Any application of such amounts or any portion of it to any Indebtedness secured by this Deed of Trust shall not be construed to cure or waive any default or notice of default under this Deed of Trust or invalidate any act done under any such default or notice.

6. Taxes and Other Sums Due. Borrower shall promptly pay, satisfy, and discharge: (a) all Impositions affecting the Property before they become delinquent; (b) such other amounts, chargeable against Borrower or the Property, as Lender reasonably deems necessary to protect and preserve the Property, this Deed of Trust, or Lender's security for the performance of the Obligations; (c) all encumbrances, charges, and liens on the Property, with interest, which in Lender's judgment are, or appear to be, prior or superior to the lien of this Deed of Trust or all costs necessary to obtain protection against such lien or charge by title insurance endorsement or surety company bond; (d) such other charges as Lender deems reasonable for services rendered by Lender at Borrower's request; and (e) all costs, fees, and expenses incurred by Lender in connection with this Deed of Trust, whether or not specified in this Deed of Trust.

On Lender's request, Borrower shall promptly furnish Lender with all notices of sums due for any amounts specified in the preceding clauses 6(a) through (e), and, on payment, with written evidence of such payment. If Borrower fails to promptly make any payment required under this Section 6, Lender may (but is not obligated to) make such payment. Borrower shall notify Lender immediately on receipt by Borrower of notice of any increase in excess of 10% of the previous year assessed value of the Property and agrees that Lender, in Borrower's name, may (but is not obligated to) contest by appropriate proceedings such increase in assessment. Without Lender's prior written consent, Borrower shall not allow any lien inferior to the lien of this Deed of Trust to be perfected against the Property and shall not permit any improvement bond for any unpaid special assessment to issue; provided, however, that the existence of such lien shall not constitute a default under this Section if Borrower is diligently pursuing a contest or cure of such lien and Borrower has posted adequate security to protect Lender's rights, interest, and priority under this Deed of Trust, as determined by Lender.

7. Leases of Property by Borrower; Management.

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a. Leases of Property by Borrower. Lender has approved the existing lease(s) of the Property as of the date hereof. At Lender's request, Borrower shall furnish Lender with executed copies of all Leases of the Property or any portion of it then in force. Lender shall have the right to review and approve all other Leases for the Property, which approval shall not be unreasonably withheld, delayed, or conditioned. At Lender's request, Borrower shall promptly cause to be delivered to Lender Estoppel Certificates from any or all tenants of the Property in form reasonably satisfactory to Lender and/or a Subordination, Non-Disturbance, and Attornment Agreement ("SNDA") from any or all tenants of the Property, in form reasonably satisfactory to Lender. Unless waived in writing by Lender in advance, each other Lease entered into must specifically provide, *inter alia*, that (a) it is subordinate to the lien of this Deed of Trust; (b) the tenant attorns to Lender (and Borrower consents to any such attornment), such attornment to be effective on Lender's acquisition of title to the Property; (c) the tenant agrees to execute such further evidence of attornment as Lender may from time to time request; and (d) the tenant's attornment shall not be terminated by foreclosure. If Borrower learns that any tenant proposes to do, or is doing, any act that may give rise to any right of setoff against rent, Borrower shall immediately (i) take measures reasonably calculated to prevent the accrual of any such right of setoff; (ii) notify Lender of all measures so taken and of the amount of any setoff claimed by any such tenant; and (iii) within ten (10) days after the accrual of any right of setoff against rent, reimburse any tenant who has acquired such right, in full, or take other measures that will effectively discharge such setoff and ensure that rents subsequently due shall continue to be payable without claim of setoff or deduction.

At Lender's request, Borrower shall assign to Lender, by written instrument satisfactory to Lender, all Leases of the Property, and all security deposits made by tenants in connection with such Leases. On assignment to Lender of any such Lease, Lender shall succeed to all rights and powers of Borrower with respect to such Lease, and Lender, in Lender's sole and absolute discretion, shall have the right to modify, extend, or terminate such Lease and to execute other further leases with respect to the Property that is the subject of such assigned Lease.

b. Management of the Property. If at any time the Property is managed other than by Borrower or by an entity controlled by Borrower, Lender shall have the right reasonably to approve the selection of such management, and Borrower shall submit the proposed management contract, and such other information about the manager as Lender reasonably requests, to Lender for its review at least twenty (20) days prior to Borrower's signing and entering in to the management contract. If at any time when the Property is being managed other than by Borrower or any entity controlled by Borrower, Lender reasonably determines that the management is not satisfactory for the protection of the Property, Lender shall have the right to require Borrower to change such management so as to be reasonably satisfactory to Lender.

8. Assignment of Rents. Borrower hereby irrevocably and absolutely assigns and transfers to Lender, all rents, issues, income, revenues, royalties and profits derived from the Property, or any business activity conducted thereon, and each and every part thereof, including all present and future leases and rental agreements ("Rents") reserving unto Borrower a license to collect the Rents prior to the occurrence of an Event of Default, as defined by Section 19 below. Subsequent to such an Event of Default, and written notice to Borrower thereof, the Rents, including those past due, unpaid or undetermined, shall be collected by Lender or its agent, and shall be applied, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness and/or obligation secured hereby, and in such order as Lender shall determine. Rights assigned to Lender under this Section 8 may be enforced by Lender without regard to the adequacy of the security hereof or the solvency of Borrower by any one or more of the following methods: (i) appointment of a receiver, (ii) Lender's taking possession of the Property; (iii) Lender's collecting any monies payable under leases or rental agreements directly from the parties obligated for payment; (iv) injunctions; and (v) any other method permitted by law. The collection of the Rents, and the application thereof as aforesaid, shall not cure or constitute a waiver of any default or notice of default



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hereunder or invalidate any act done pursuant to such notice. Borrower and Lender intend that this assignment shall be a present, absolute and unconditional assignment, not an assignment for additional security only, and shall, immediately upon the execution hereof, subject to the license granted above, give Lender, and its agent, the right to collect the Rents and to apply them as aforesaid.

If the Rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the Rents, any funds expended by Lender for such purposes shall become Indebtedness of Borrower to Lender secured by this Deed of Trust. Unless Lender and Borrower agree in writing to other terms of payment, such amounts shall be payable on notice from Lender to Borrower requesting such payment and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to Governmental Requirements, in which event the amounts shall bear interest at the highest rate that may be collected from Borrower under Governmental Requirements.

Borrower expressly understands and agrees that Lender will have no liability to Borrower or any other Person for Lender's failure or inability to collect Rents from the Property or for failing to collect such Rents in an amount that is equal to the fair market rental value of the Property. Borrower understands and agrees that neither the assignment of Rents to Lender nor the exercise by Lender of any of its rights or remedies under this Deed of Trust shall be deemed to make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment, or operation of all or any portion of it, unless and until Lender, in person or by agent, assumes actual possession of it. Nor shall appointment of a receiver for the Property by any court at the request of Lender or by agreement with Borrower, or the entering into possession of the Property or any part of it by such receiver be deemed to make Lender a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment, or operation of all or any portion of it.

During an Event of Default, any and all Rents collected or received by Borrower shall be accepted and held for Lender in trust and shall not be commingled with Borrower's funds and property, but shall be promptly paid over to Lender.

This Section 8 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Section 8 and the provisions of the Utah Act, the provisions of the Utah Act shall control and Borrower shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

9. **Funds for Taxes and Insurance.** Lender shall have the rights set forth in this Section 9. After an Event of Default under this Deed of Trust or any of the Loan Documents, regardless of whether the default has been cured, Lender may at any subsequent time, at its option to be exercised on thirty (30) days written notice to Borrower, require Borrower to deposit with Lender or its designee, at the time of each payment of an installment of interest or principal under the Note, an additional amount sufficient to discharge the obligations of Borrower under Sections 4 and 6 of this Deed of Trust as they become due. The calculation of the amount payable and of the fractional part of it to be deposited with Lender shall be made by Lender in its sole and absolute discretion. These amounts shall be held by Lender or its designee not in trust and not as agent of Borrower and shall not bear interest, and shall be applied to the payment of any of the Obligations under the Loan Documents in such order or priority as Lender shall determine. If at any time within thirty (30) days before the due date of these obligations the amounts then on deposit shall be insufficient to pay the obligations under Sections 4 and 6 in full, Borrower shall deposit the amount of the deficiency with Lender within ten (10) days after Lender's demand. If the amounts deposited are in excess of the actual obligations for which they were deposited, Lender may refund any such excess, or, at its option, may hold the excess in a reserve account, not in trust and not bearing interest, and reduce proportionately

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the required monthly deposits for the ensuing year. Nothing in this Section shall be deemed to affect any right or remedy of Lender under any other provision of this Deed of Trust or under any statute or rule of law to pay any such amount and to add the amount so paid to the Indebtedness secured by this Deed of Trust. Lender shall have no obligation to pay insurance premiums or taxes except to the extent the fund established under this Section is sufficient to pay such premiums or taxes, to obtain insurance, or to notify Borrower of any matters relative to the insurance or taxes for which the fund is established under this Section.

Lender or its designee shall hold all amounts so deposited as additional security for the sums secured by this Deed of Trust. Lender may, in its sole and absolute discretion and without regard to the adequacy of its security under this Deed of Trust, during the continuance of an Event of Default apply such amounts or any portion of it to any Indebtedness secured by this Deed of Trust, and such application shall not be construed to cure or waive any default or notice of default under this Deed of Trust.

If Lender requires deposits to be made under this Section 9, Borrower shall deliver to Lender all tax bills, bond and assessment statements, statements for insurance premiums, and statements for any other obligations referred to above as soon as Borrower receives such documents.

If Lender sells or assigns this Deed of Trust, Lender shall have the obligation to transfer all amounts deposited under this Section 9 to the purchaser or assignee. After such a transfer, Lender shall be relieved and have no further liability under this Deed of Trust for the application of such deposits, and Borrower shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

10. **Assignment of Causes of Action, Awards, and Damages.** All causes of action, and all sums due or payable to Borrower for injury or damage to the Property, or as damages incurred in connection with the transactions in which the Loan secured by this Deed of Trust was made, including, without limitation, causes of action and damages for breach of contract, fraud, concealment, construction defects, or other torts, or compensation for any conveyance in lieu of condemnation, are assigned to Lender, and all proceeds from such causes of action and all such sums shall be paid to Lender for credit against the Indebtedness secured by this Deed of Trust. Borrower shall notify Lender immediately on receipt by Borrower of notice that any such sums have become due or payable and, immediately on receipt of any such sums, shall promptly remit such sums to Lender.

After deducting all expenses, including Attorney Fees, incurred by Lender in recovering or collecting any sums under this Section 10, Lender may apply or release the balance of any funds received by it under this Section, or any part of such balance, as it elects. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any cause of action assigned to it under this Section and may make any compromise or settlement in such action whatsoever. Borrower covenants that it shall execute and deliver to Lender such further assignments of any such compensation awards, damages, or causes of action as Lender may request from time to time. If Lender fails or does not elect to prosecute any such action or proceeding and Borrower elects to do so, Borrower may conduct the action or proceeding at its own expense and risk.

11. **Defense of Deed of Trust; Litigation.** Borrower shall give Lender immediate written notice of any action or proceeding (including, without limitation (a) any inverse condemnation or eminent domain action, and (b) any judicial, whether civil, criminal, or probate, or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Property, this Deed of Trust, Lender's security for the performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents. Despite any other provision of this Deed of Trust, Borrower agrees that Lender or Trustee may (but is not obligated to) commence, appear in,

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prosecute, defend, compromise, and settle, in Lender's or Borrower's name, and as attorney-in-fact for Borrower, and incur necessary costs and expenses, including Attorney Fees in so doing, any action or proceeding, whether a civil, criminal, or probate judicial matter, nonjudicial proceeding, judicial reference, or other alternative dispute resolution procedure, reasonably necessary to preserve or protect, or affecting or purporting to affect, the Property, this Deed of Trust, Lender's security for performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents, and that if neither Lender nor Trustee elects to do so, Borrower shall commence, appear in, prosecute, and defend any such action or proceeding. Borrower shall pay all costs and expenses of Lender and Trustee, including costs of evidence of title and Attorney Fees, in any such action or proceeding in which Lender or Trustee may appear or for which legal counsel is sought, whether by virtue of being made a party defendant or otherwise, and whether or not the interest of Lender or Trustee in the Property is directly questioned in such action or proceeding, including, without limitation, any action for the condemnation or partition of all or any portion of the Property and any action brought by Lender to foreclose this Deed of Trust or to enforce any of its terms or provisions.

12. **Borrower's Failure to Comply With Deed of Trust.** If Borrower fails to make any payment or do any act required by this Deed of Trust, or if there is any action or proceeding (including, without limitation, any judicial or nonjudicial proceeding to foreclose the lien of a junior or senior mortgage or deed of trust) affecting or purporting to affect the Property, this Deed of Trust, Lender's security for the performance of the Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Note or this Deed of Trust, Lender or Trustee may (but is not obligated to) (a) make any such payment or do any such act in such manner and to such extent as either deems necessary to preserve or protect the Property, this Deed of Trust, or Lender's security for the performance of Borrower's Obligations and payment of the Indebtedness, or the rights or powers of Lender or Trustee under the Loan Documents, Lender and Trustee being authorized to enter on the Property for any such purpose; and (b) in exercising any such power, pay necessary expenses, retain attorneys, and pay Attorney Fees incurred in connection with such action, without notice to or demand on Borrower and without releasing Borrower from any Obligations or Indebtedness.

13. **Sums Advanced to Bear Interest and to Be Secured by Deed of Trust.** Following notice from Lender, Borrower shall pay any sums advanced or paid by Lender or Trustee under any provision of this Deed of Trust or the other Loan Documents within fifteen (15) days of Lender's notice. Until so repaid, all such sums and all other sums payable to Lender or Trustee shall be added to, and become a part of, the Indebtedness secured by this Deed of Trust and bear interest from the date of advancement or payment by Lender or Trustee at the same rate as provided in the Note, unless payment of interest at such rate would be contrary to Governmental Requirements. All sums advanced by Lender under this Deed of Trust or the other Loan Documents, whether or not required to be advanced by Lender under the terms of this Deed of Trust or the other Loan Documents, shall conclusively be deemed to be mandatory advances required to preserve and protect this Deed of Trust and Lender's security for the performance of the Obligations and payment of the Indebtedness, and shall be secured by this Deed of Trust to the same extent and with the same priority as the principal and interest payable under the Note.

14. **Inspection of Property.** In addition to any rights Lender may have under applicable Utah law, Lender may make, or authorize other Persons, including, but not limited to, appraisers and prospective purchasers at any foreclosure sale commenced by Lender, to enter on or inspect the Property at reasonable times and for reasonable durations. Except in case of an emergency, when the Borrower or tenant of the Property has abandoned the premises, or if it is impracticable to do so, the Lender shall give the Borrower or tenant of the Property reasonable notice of the Lender's intent to enter, and enter only during the Borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

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15. **Financial Information.**

a. **Borrower's Financial Statements.** Borrower shall furnish, or cause to be furnished, to Lender all financial information as required under the terms of the Loan Agreement.

b. **Recordkeeping.** Borrower shall keep adequate records and books of account in accordance with reasonable accounting principles applied on a consistent basis, acceptable to Lender, and practices and shall permit Lender, by its agents, accountants, and attorneys, to examine Borrower's records and books of account and to discuss the affairs, finances, and accounts of Borrower with the officers of Borrower, at such reasonable times as Lender may request.

16. **Uniform Commercial Code Security Agreement.** This Deed of Trust is intended to be and shall constitute a security agreement under the Utah Uniform Commercial Code for any of the Personalty specified as part of the Property that, under Governmental Requirements, may be subject to a security interest under the Utah Uniform Commercial Code, and Borrower grants to Lender a security interest in those items. Borrower authorizes Lender to file financing statements in all states, counties, and other jurisdictions as Lender may elect, without Borrower's signature if permitted by law. Borrower agrees that Lender may file this Deed of Trust, or a copy of it, in the real estate records or other appropriate index or in the Office of the Secretary of State of the State of Utah and such other states as the Lender may elect, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Deed of Trust or executed duplicate original of this Deed of Trust, or a copy certified by a County Recorder in the State of Utah, or of any other security agreement or financing statement, shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, at Lender's request, any UCC financing statements, as well as any extensions, renewals, and amendments, and copies of this Deed of Trust in such form as Lender may require to perfect a security interest with respect to the Personalty. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases of such statements, and shall pay all reasonable costs and expenses of any record searches for financing statements that Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created any other security interest in the items, including any replacements and additions.

On any Event of Default, Lender shall have the remedies of a secured party under the Utah Uniform Commercial Code and, at Lender's option, may also invoke the remedies in Section 21 of this Deed of Trust as to such items. In exercising any of these remedies, Lender may proceed against the items of Property and any items of Personalty separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Utah Uniform Commercial Code or of the remedies in Section 21 of this Deed of Trust.

17. **Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under the Utah Commercial Code, as amended or recodified from time to time, covering any portion of the Property that now is or later may become a fixture attached to the Property or to any Improvement, and with respect thereto, Borrower shall be "debtor" and Lender shall be "secured party."

18. **Waiver of Statute of Limitations.** Borrower waives the right to assert any statute of limitations as a defense to the Loan Documents and the Obligations secured by this Deed of Trust, to the fullest extent permitted by Governmental Requirements.

19. **Events of Default.** The term Event of Default as used in this Deed of Trust means the occurrence or happening, at any time and from time to time, of any one or more of the following:

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a. (i) failure to pay, when and as due, any principal, interest or other amounts payable hereunder or under any Loan Document and such failure shall continue unremedied for ten (10) days after notice thereof is given by Lender to Borrower; or (ii) failure to comply with or perform any other agreement or covenant of Borrower contained herein or in any Loan Document, which failure does not otherwise constitute an Event of Default, and such failure shall continue unremedied for thirty (30) days after notice thereof is given by Lender to Borrower; or

b. any default, event of default, or similar event shall occur or continue under any Loan Document, and shall continue beyond any applicable notice, grace or cure period set forth in such Loan Document; or

c. there shall occur any default or event of default, any similar event, any event that requires the prepayment of borrowed money or permits the acceleration of the maturity thereof, or any event or condition that might become any of the foregoing with notice or the passage of time or both, under the terms of any evidence of indebtedness or other agreement issued or assumed or entered into by Borrower or any Related Party, or under the terms of any document or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable notice, grace or cure period; or

d. any representation, warranty, certificate, financial statement, report, notice, or other writing furnished by or on behalf of Borrower or any Related Party to Lender is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified; or

e. this Deed of Trust or any Loan Document, including any guaranty of or pledge of collateral security for the Indebtedness, shall be repudiated or shall become unenforceable or incapable of performance in accord with its terms; or

f. Borrower or any Related Party (in each case if not a natural person) shall fail to maintain their existence in good standing in their state of organization or formation or shall fail to be duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Borrower or any Related Party; or

g. Borrower or any Related Party shall be declared legally incompetent, dissolve, liquidate, merge, consolidate, or cease to be in existence for any reason; or, if Borrower is a partnership or joint venture, any general or limited partner or joint venturer of Borrower shall withdraw from Borrower, or any general partner shall become a limited partner; provided, however, that the death or incompetence of a Guarantor that is a natural person (in each case, the "Subject Guarantor") shall not in and of itself be an Event of Default if, within sixty (60) days after the death or declaration of incompetence of the Subject Guarantor, either (i) Lender agrees in its sole and absolute discretion to accept the reaffirmation of the estate and/or the successor Trustee of the trust of the Subject Guarantor, as applicable, of the guaranty and indemnity obligations of the Subject Guarantor under the Related Documents or (ii) Lender agrees in its sole and absolute discretion to accept a substitute Guarantor proposed by Borrower; provided, the foregoing notwithstanding: (x) Lender shall be entitled at any time to take such steps as in its sole discretion Lender may deem necessary or appropriate to protect its interests (such as filing a probate proceeding claim); and (y) Lender shall have no obligation to make further advances under the Note after such death or incompetency; or

h. any person or entity presently not in control of a Borrower or Related Party which is not a natural person shall obtain control directly or indirectly of such a Borrower or Related Party, other

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than an institutional trustee (e.g., Northern Trust), whether by purchase or gift of stock or assets, by contract, or otherwise; or

i. any proceeding (judicial or administrative) shall be commenced against Borrower or any Related Party, or with respect to any of their assets, which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay the Indebtedness; or a judgment or settlement shall be entered or agreed to in any such proceeding which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay the Indebtedness; or any garnishment, summons, writ of attachment, citation, levy or the like is issued against or served upon Lender for the attachment of any property of Borrower or any Related Party in Borrower's possession or control; or

j. Borrower shall grant or any person (other than Lender) shall obtain or perfect a security interest in, or file any financing statement covering, any collateral given as security for the Indebtedness; Lender shall not have a security interest in any such collateral or other assets constituting security for the Indebtedness, of first-priority except as allowed hereby or by the related collateral documents, and enforceable in accord with this Deed of Trust (as to the collateral) or the related collateral documents (as to such other assets); or any notice of a federal tax lien against Borrower or any Related Party shall be filed with any public recorder; or

k. there shall be any material loss or depreciation in the value of any collateral for the Indebtedness for any reason; or, unless expressly permitted by this Deed of Trust or the Loan Documents, all or any part of any such collateral or any direct, indirect, legal, equitable or beneficial interest therein is assigned, transferred or sold without Lender's prior written consent; or

l. any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, or similar proceeding, domestic or foreign, is instituted by or against Borrower or any Related Party without the prior written consent of Lender, and, if instituted against Borrower or any Related Party, shall not be dismissed or vacated within ninety (90) days after the filing or other institution thereof; or

m. Borrower or any Related Party shall become insolvent, generally shall fail or be unable to pay its debts as they mature, shall admit in writing its inability to pay its debts as they mature, shall make a general assignment for the benefit of its creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its usual business.

20. **Acceleration on Transfer or Encumbrance.**

a. **Acceleration on Transfer or Encumbrance of Property.** If Borrower sells, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is a sale or transfer of beneficial interests in any one Borrower that cumulatively equals or exceeds twenty-five percent (25%) of the beneficial ownership interests of that Borrower outstanding at the date of this Deed of Trust; or if Borrower changes or permits to be changed the character or use of the Property, or drills or extracts or enters into any lease for the drilling or extracting of oil, gas, or other hydrocarbon substances or any mineral of any kind or character on the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Lender's prior written consent, then Lender, at Lender's option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust, including those in Section 21. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

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b. **Replacement Personalty.** Despite the provisions of Section 20.a., Borrower may from time to time replace Personalty constituting a part of the Property, as long as (a) the replacements for such Personalty are of equivalent value and quality; (b) Borrower has good and clear title to such replacement Personalty free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise), or charges of any kind, or the rights of any conditional sellers, vendors, or any other third parties in or to such replacement Personalty have been expressly subordinated to the lien of the Deed of Trust in a manner satisfactory to Lender and at no cost to Lender; and (c) at Lender's option, Borrower provides at no cost to Lender satisfactory evidence that the Deed of Trust constitutes a valid and subsisting lien on and security interest in such replacement Personalty of the same priority as this Deed of Trust has on the Property and is not subject to being subordinated or its priority affected under any Governmental Requirements.

21. **Rights and Remedies of Lender on Default.** Without limiting any other rights and remedies of Lender in this Deed of Trust or in law or equity, Lender shall have the following remedies:

a. **Acceleration and Sale on Default.** If an Event of Default occurs, Lender, at its option, in addition to other remedies provided at law, may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind, by delivering to Trustee a written affidavit or declaration of default and demand for sale, executed by Lender and reciting facts demonstrating such default by Borrower, together with a written notice of default and election to sell the Property. Lender shall also deposit with Trustee the Note, this Deed of Trust, and documents evidencing any additional advances or expenditures secured by this Deed of Trust. On receipt by Trustee of such affidavit or declaration of default and such notice of default and election to sell, Trustee shall, accept such election to sell as true and conclusive of all facts and statements in such affidavit or declaration of default and shall cause such notice of default and election to sell to be recorded as required by Governmental Requirements. On the expiration of such period as may then be required by law and other applicable Governmental Requirements following recordation of such notice of default, and after notice of sale has been given in the manner and for the period required by law and other Governmental Requirements, Trustee, without demand on Borrower, shall sell the Property at the time and place fixed in such notice of sale, either in whole or in separate parcels, and in such order as Trustee may determine or Lender may direct (but subject to Borrower's statutory right under Utah Code Annotated § 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale; provided, however, that Lender may offset its bid at such sale to the extent of the full amount owed to Lender under the Loan Documents, including, without limitation, Trustee's fees, expenses of sale, and costs, expenses, and Attorney Fees incurred by or on behalf of Lender in connection with collecting, litigating, or otherwise enforcing any right under the Loan Documents. Trustee may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by Trustee at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Annotated § 57-1-27. Trustee shall deliver to the purchaser at such public auction its deed conveying the Property sold, but without any covenant or warranty, express or implied. The recital in such deed of any matter of fact concerning notices shall be conclusive proof of its truthfulness. Any Person, including Borrower, Trustee, or Lender, may purchase at such sale.

The proceeds or avails of any sale made under or by virtue of this Deed of Trust, together with any other sums secured by this Deed of Trust, which then may be held by the Trustee or Lender or any other Person, shall be applied as follows, but all subject to applicable law:

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FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of Lender's and attorneys' fees actually incurred not to exceed the amount which may be provided for in this Deed of Trust.

SECOND: To the payment of the Indebtedness secured in this Deed of Trust.

THIRD: To the balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Annotated § 57-1-29

b. Receiver. If an Event of Default occurs and is continuing, Lender, as a matter of strict right and without notice to Borrower or anyone claiming under Borrower and without regard to the then value of the Property, will have the right to apply *ex parte* to any court having jurisdiction to appoint a Receiver of the Property, and Borrower waives notice of any application for that, provided a hearing to confirm the appointment with notice to Borrower is set within fourteen (14) days after the appointment. Any Receiver will have all the powers and duties of receivers in similar cases and all the powers and duties of Lender in case of entry as provided in this Deed of Trust, and will continue as such and exercise all those powers until the date of confirmation of sale, unless the receivership is terminated sooner. The Receiver may be an employee of Lender and shall serve without bond if permitted by law. All fees of the Receiver and his or her attorney shall become part of the Indebtedness secured by this Deed of Trust and shall be payable on demand, with interest at the Note rate from the date of expenditure until repaid. Borrower hereby waives any right it may have to require Lender to make any showing or meet any obligation as a condition to the appointment of a receiver.

c. Lender's Option to Cure Borrower Defaults. Unless otherwise specifically provided for in this Deed of Trust, if Borrower at any time fails to perform or comply with any of the terms, covenants, and conditions required on Borrower's part to be performed and complied with under this Deed of Trust, the Note, any of the other Loan Documents, or any other agreement that, under the terms of this Deed of Trust, Borrower is required to perform, then Lender, after fifteen (15) days' notice to Borrower (or without notice if Lender determines that an emergency exists), and without waiving or releasing Borrower from any of the Obligations, may, subject to the provisions of any of the agreements,

- i. make from its own funds any payments payable by Borrower and take out, pay for, and maintain any of the insurance policies provided for; and
- ii. perform any other acts on the part of Borrower to be performed and enter on the Property for that purpose.

The making by Lender of payments out of Lender's own funds will not, however, be deemed to cure the default by Borrower, and it will not be cured unless and until Borrower reimburses Lender for the payments. All sums paid and all reasonable costs and expenses incurred by Lender in connection with the performance of any act, together with interest on unpaid balances at the Default Rate from the respective dates of Lender's making of each payment, will be added to the principal of the Indebtedness, will be secured by the lien of this Deed of Trust, prior to any right, title, or interest in or claim on the Property attaching or accruing subsequent to the lien of this Deed of Trust, and will be payable by Borrower to Lender on demand.

d. Waive Lien. Lender or its agents, representatives, and employees may waive its lien against the Property or any portion of it, including the Improvements and the Personal Property, to the extent that the Property is found to be environmentally impaired in accordance, and to exercise all rights and remedies of an unsecured creditor against Borrower and all of Borrower's assets and property for the recovery of any deficiency and environmental costs.



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22. **Obligation to Notify Lender of Bankruptcy, Insolvency, Transfer, or Encumbrance.** Borrower shall notify Lender in writing, at or before the time of the occurrence of any event described in Sections 19 and 20 of this Deed of Trust, of such event and shall promptly furnish Lender with any and all information on such event that Lender may request.

23. **Waiver of Marshaling.** Despite the existence of interests in the Property other than that created by this Deed of Trust, and despite any other provision of this Deed of Trust, if Borrower defaults in paying the Indebtedness or in performing any Obligations, to the extent permitted by applicable law, Lender shall have the right, in Lender's sole and absolute discretion, to establish the order in which the Property will be subjected to the remedies provided in this Deed of Trust and to establish the order in which all or any part of the Indebtedness secured by this Deed of Trust is satisfied from the proceeds realized on the exercise of the remedies provided in this Deed of Trust. To the extent permitted by applicable law, Borrower and any Person who now has or later acquires any interest in the Property with actual or constructive notice of this Deed of Trust waives any and all rights to require a marshaling of assets in connection with the exercise of any of the remedies provided in this Deed of Trust or otherwise provided by Governmental Requirements.

24. **Environmental Matters.**

a. **Borrower's Representations and Warranties.** Borrower represents and warrants to Lender to the best of Borrower's knowledge and belief after due inquiry and except as disclosed in the ESA, that:

i. The Property and Borrower are not in violation of any Environmental Laws or subject to any existing, pending, or threatened investigation by any Governmental Authority under any Environmental Laws.

ii. Borrower has not obtained and is not required by any Environmental Laws to obtain any permits or licenses to construct or use the Property or the Improvements and has not received written notice of a failure to obtain such permits as required by any Environmental Laws.

iii. Borrower has conducted an appropriate inquiry into previous uses and ownership of the Property, and after such inquiry determined that no Hazardous Substance in violation of any Environmental Law has been disposed of, transported, or released on or at the Property.

iv. No part of the Property is being used or, to the knowledge of Borrower, has been used at any previous time, for the disposal, storage, treatment, processing, transporting, or other handling of Hazardous Substances in violation of any Environmental Law, nor is any part of the Property affected by any Hazardous Substance contamination.

v. No real property adjoining the Property is being used, or has ever been used at any previous time, for the disposal, storage, treatment, processing, or other handling of Hazardous Substances in violation of any Environmental Law, nor is any other real property adjoining the Property affected by Hazardous Substances contamination.

vi. No investigation, administrative order, consent order or agreement, litigation, or settlement with respect to Hazardous Substances or Hazardous Substances contamination is proposed, threatened, anticipated, or in existence regarding the Property.

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The Property is not currently on, and to Borrower's knowledge, after diligent investigation and inquiry, has never been on, any federal or state "Superfund" or "Superlien" list.

vii. Neither Borrower nor, to the best of Borrower's knowledge and belief, any tenant of any portion of the Property has received any notice from any Governmental Authority regarding any violation of any Environmental Laws.

viii. The use that Borrower makes and intends to make of the Property shall not result in the disposal or release of any Hazardous Substances on, in, or to the Property in violation of any Environmental Law.

ix. Borrower shall not cause any violation of any Environmental Laws, nor permit any tenant of any portion of the Property to cause such a violation, nor permit any environmental liens to be placed on any portion of the Property.

x. Neither Borrower nor any third party shall use, generate, manufacture, store, release, discharge, or dispose of any Hazardous Substance on, under, or about the Property, or transport any Hazardous Substance to or from the Property.

b. Survival of Representations and Warranties. The foregoing representations and warranties shall be continuing and shall be true and correct for the period from the date of this instrument to the release of this Deed of Trust (whether by payment of the Indebtedness secured by this Deed of Trust or foreclosure or action in lieu of foreclosure), and these representations and warranties shall survive such release.

c. Notice to Lender. Borrower shall give prompt written notice to Lender of:

i. Any proceeding or inquiry by any Governmental Authority regarding the presence or threatened presence of any Hazardous Substance on the Property;

ii. All claims made or threatened by any third party against Borrower or the Property relating to any loss or injury resulting from any Hazardous Substance;

iii. Any notice of violation with respect to any Environmental Law given by any Governmental Authority; and

iv. Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause it or any part of it to be subject to any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Laws.

d. Lender's Right to Join Legal Actions. Lender shall have the right, at its option, but at Borrower's sole cost and expense, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated by or against Borrower or the Property in connection with any Environmental Laws.

e. Borrower's Indemnity. Borrower shall indemnify, defend, and hold harmless Lender, its directors, officers, employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, or any order, consent decree, or settlement relating to the cleanup of a Hazardous Substance, or any claims of loss, damage, liability, expense, or injury relating

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to or arising from, directly or indirectly, any disclosure by Lender to anyone of information, whether true or not, relative to a Hazardous Substance or Environmental Law violation, including, without limitation, Attorney Fees. This indemnity shall survive the release of this Deed of Trust (whether by payment of the Indebtedness secured by this Deed of Trust or foreclosure or action in lieu of foreclosure).

f. Environmental Audits. From time to time Lender may reasonably request but not more than once each calendar year, and Borrower shall provide at its sole cost and expense within forty-five (45) days after written request by Lender, a report from a qualified engineering firm or other qualified consultant acceptable to Lender with respect to an investigation and audit of the Property (environmental audit), which environmental audit report shall be addressed to Lender and based on a thorough review of past and present uses, occupants, ownership, and tenancy of the Property and adjacent properties; soils or test boring reports from the construction of the Property; liaison with any Governmental Authority regarding known or suspected Hazardous Substances contamination, use, generation, or storage on the Property or other properties in the area; review of aerial photographs; and visual site inspection noting unregulated fills, storage tanks or areas, ground discoloration or soil odors; and other investigative methods deemed necessary by the consultant to enable the consultant to report that there is no apparent or likely contamination of the Property by Hazardous Substances, whether such source of contamination is the Property or another property in the area; and Borrower shall, if deemed reasonably necessary to further investigate suspected or likely contamination, provide Lender with supplemental reports by acceptable qualified consultants of the analysis of core drilling or groundwater supplies from the Property, showing no contamination by Hazardous Substances.

g. Duty to Cure. If the environmental audit discloses matters unacceptable to Lender, Borrower shall cure such matters in a manner reasonably acceptable to Lender within one hundred twenty (120) days after notice from Lender which notice shall include a copy of Lender's environmental audit or supplemental report. Failure to cure such matters shall be a default under the Loan Documents and Lender may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable, and may exercise all rights and remedies provided in this Deed of Trust.

h. Waiver of Lien. Upon the occurrence of an Event of Default hereunder, Lender shall have the right to waive its lien against the Property or any portion thereof, whether fixtures or Personalty, to the extent that such Property is found to be environmentally impaired, and to exercise any and all rights and remedies of an unsecured creditor against Borrower and all of Borrower's assets and property for the recovery of any deficiency and environmental costs, including but not limited to seeking an attachment order under applicable Utah law. Borrower acknowledges and agrees that notwithstanding any term or provision contained herein or in any of the Loan Documents, all judgments and awards entered against Borrower with respect to any of the environmental provisions set forth in this Deed of Trust or the Loan Documents shall be exceptions to any non-recourse or exculpatory provision contained herein or therein, if any, and Borrower shall be fully and personally liable for all such judgments and awards entered against Borrower and/or Lender hereunder, and such liability shall not be limited to the unpaid principal balance of the Note or any other outstanding Indebtedness. Borrower's obligations under this Section shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transfer of the Property or this Deed of Trust. For the purposes of any action brought under this Section, Borrower hereby waives the defense of laches and any applicable statute of limitations.

25. Trustee. The Trustee shall be deemed to have accepted the terms of this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. The Trustee shall not be obligated to notify any party to this Deed of Trust of any pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender, or Trustee is a party, unless such sale relates to or reasonably might affect the Property, this Deed of Trust, Lender's security for the payment of the

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Indebtedness and the performance of the Obligations, or the rights or powers of Lender or Trustee under the Loan Documents, or unless such action or proceeding has been instituted by Trustee against the Property, Borrower, or Lender.

26. **Arm's Length Transactions.** Borrower acknowledges and agrees that:

a. The transactions contemplated by the Loan Documents are arm's length commercial transactions among Borrower, Lender and any other parties thereto.

b. In connection with such transactions, Lender is acting solely as a principal and not as an agent or a fiduciary of Borrower or any Related Party.

c. With respect to any advances of Obligations or the process leading thereto (whether or not Lender or any Lender Affiliate has advised or is currently advising Borrower or any Related Party on other matters), Lender has not assumed a fiduciary responsibility in favor of Borrower or any Related Party or any other obligation of Borrower or any Related Party.

d. Borrower and the Related Parties have consulted with their own legal and financial advisors to the extent they deem appropriate in connection with the transactions contemplated by the Loan Documents.

27. **Power of Trustee to Reconvey or Consent; Swap Matters.**

a. At any time, without liability and without notice to Borrower, on Lender's written request and presentation of the Note and this Deed of Trust to Trustee for endorsement, and without altering or affecting (a) the personal liability of Borrower or any other Person for the payment of the Indebtedness secured by this Deed of Trust, or (b) the lien of this Deed of Trust on the remainder of the Property as security for the repayment of the full amount of the Indebtedness then or later secured by this Deed of Trust, (c) or any right or power of Lender or Trustee with respect to the remainder of the Property, Trustee may (i) reconvey or release any part of the Property from the lien of this Deed of Trust; (ii) approve the preparation or filing of any map or plat of the Property; (iii) join in the granting of any easement burdening the Property; or (iv) enter into any extension or subordination agreement affecting the Property or the lien of this Deed of Trust.

b. Borrower acknowledges that Lender has appointed Trustee as Lender's collateral agent to hold and manage all security for the Swap Obligations, with full power and authority to manage, enforce, administer, modify, renew, amend, satisfy, release, subordinate and otherwise deal with such security, including this Deed of Trust, without the consent of Lender. Without limitation of the foregoing, Borrower hereby acknowledges and agrees that as collateral agent, Trustee shall have full power and authority to enforce the obligations of the Note, this Deed of Trust, and all Loan Documents, including without limitation by any foreclosure by sale, in its own name and without the necessity to join Lender as a party to any such proceeding.

28. **Duty to Reconvey.** On Lender's written request reciting that all sums secured hereby have been paid, surrender of the Note and this Deed of Trust to Trustee for cancellation and retention by Trustee, and payment by Borrower of any reconveyance fees customarily charged by Trustee, Trustee shall reconvey, without warranty, the Property then held by Trustee under this Deed of Trust. The recitals in such reconveyance of any matters of fact shall be conclusive proof of their truthfulness. The grantee in such reconveyance may be described as "the person or persons legally entitled to the Property." Such request and reconveyance shall operate as a reassignment of the Rents assigned to Lender in this Deed of Trust.

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29. **Substitution of Trustee**. Lender, at Lender's option, may from time to time, by written instrument, substitute a successor or successors to any Trustee named in or acting under this Deed of Trust, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties in which the Property is located, shall constitute conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all right, title, estate, powers, and duties of such predecessor Trustee, including, without limitation, the power to reconvey the Property. To be effective, the instrument must contain the names of the original Borrower, Trustee, and Lender under this Deed of Trust, the book and page or instrument or document number at which, and the county or counties in which, this Deed of Trust is recorded, and the name and address of the substitute Trustee. If any notice of default has been recorded under this Deed of Trust, this power of substitution cannot be exercised until all costs, fees, and expenses of the then acting Trustee have been paid. On such payment, the then acting Trustee shall endorse receipt of the payment on the instrument of substitution. The procedure provided in this Section for substitution of Trustees is not exclusive of other provisions for substitution provided by Governmental Requirements.

30. **No Waiver by Lender**. No waiver by Lender of any right or remedy provided by the Loan Documents or Governmental Requirements shall be effective unless such waiver is in writing and signed by an authorized officer of Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. No waiver by Lender of any right or remedy granted to Lender under the Loan Documents or Governmental Requirements, nor any course of dealing between Lender and Borrower, as to any transaction or occurrence shall be deemed a waiver of any future transaction or occurrence. The acceptance of payment of any sum secured by this Deed of Trust after its due date, or the payment by Lender of any Indebtedness or the performance by Lender of any Obligations of Borrower under the Loan Documents, on Borrower's failure to do so, or the addition of any payment so made by Lender to the Indebtedness secured by this Deed of Trust, or the exercise of Lender's right to enter the Property and receive and collect the Rents from it, or the assertion by Lender of any other right or remedy under the Loan Documents, shall not constitute a waiver of Lender's right to require prompt performance of all other Obligations of Borrower under the Loan Documents and payment of the Indebtedness, or to exercise any other right or remedy under the Loan Documents for any failure by Borrower to timely and fully pay the Indebtedness and perform its Obligations under the Loan Documents. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender unless otherwise expressly provided. Lender may waive any right or remedy under the Loan Documents or Governmental Requirements without notice to or consent from Borrower, any Credit Support Party of the Indebtedness and of Borrower's Obligations under the Loan Documents, or any holder or claimant of a lien or other interest in the Property that is junior to the lien of this Deed of Trust, and without incurring liability to Borrower or any other Person by so doing.

31. **Consents and Modifications; Borrower and Lien Not Released**. Despite Borrower's default in the payment of any Indebtedness secured by this Deed of Trust or in the performance of any Obligations under this Deed of Trust or Borrower's breach of any obligation, covenant, or agreement in the Loan Documents, Lender, at Lender's option, without notice to or consent from Borrower, any Credit Support Party of the Indebtedness and of Borrower's Obligations under the Loan Documents, or any holder or claimant of a lien or interest in the Property that is junior to the lien of this Deed of Trust, and without incurring liability to Borrower or any other Person by so doing, may from time to time (a) extend the time for payment of all or any portion of Borrower's Indebtedness under the Loan Documents; (b) accept a renewal note or notes, or release any Person from liability, for all or any portion of such Indebtedness; (c) agree with Borrower to modify the terms and conditions of payment under the Loan Documents; (d) reduce the amount of the monthly installments due under Section 9 of this Deed of Trust; (e) reconvey or release other or additional security for the repayment of Borrower's Indebtedness under the Loan Documents; (f)

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approve the preparation or filing of any map or plat with respect to the Property; (g) enter into any extension or subordination agreement affecting the Property or the lien of this Deed of Trust; and (h) agree with Borrower to modify the term, the rate of interest, or the period of amortization of the Note or alter the amount of the monthly installments payable under the Note. No action taken by Lender under this Section shall be effective unless it is in writing, subscribed by Lender, and, except as expressly stated in such writing, no such action will impair or affect (i) Borrower's obligation to pay the Indebtedness secured by this Deed of Trust and to observe all Obligations of Borrower contained in the Loan Documents; (ii) the guaranty of any Person of the payment of the Indebtedness secured by this Deed of Trust; or (iii) the lien or priority of the lien of this Deed of Trust. At Lender's request, Borrower shall promptly pay Lender a reasonable service charge, together with all insurance premiums and Attorney Fees as Lender may have advanced, for any action taken by Lender under this Section.

32. **Waiver of Right of Offset.** Under no circumstances shall Borrower fail or delay to perform (or resist the enforcement of ) any of its obligations in connection with any of the Loan Documents because of any alleged offsetting claim or cause of action against Lender (or any indebtedness or obligation of Lender) which has not been confirmed in a final judgment of a court of competent jurisdiction (sustained on appeal, if any ) against Lender, and Borrower hereby waives any such rights of setoff (or offset) which it might otherwise have with respect to any such claims or causes of action against Lender (or any such obligations or indebtedness of Lender), unless and until such right of setoff is confirmed and liquidated by such a final judgment.

33. **Future Advances.** On request by Borrower, Lender, at Lender's option, may make future advances to Borrower. All such future advances, with interest, shall be added to and become a part of the Indebtedness secured by this Deed of Trust when evidenced by promissory note(s) reciting that such note(s) are secured by this Deed of Trust.

34. **Prepayment.** If the Note secured by this Deed of Trust provides for a fee or charge as consideration for the acceptance of prepayment of principal, Borrower agrees to pay said fee or charge if the Indebtedness or any part of it shall be paid, whether voluntarily or involuntarily, before the due date stated in the Note, even if Borrower has defaulted in payment or in the performance of any agreement under this Deed of Trust and Lender, for that reason or by reason of Sections 20 and 21 of this Deed of Trust, shall have declared all sums secured by this Deed of Trust immediately due and payable.

35. **Additional Borrower Representations.** To induce Lender to enter into this Deed of Trust, the Note, and the other Loan Documents and to make the Loan, Borrower makes the following representations and warranties, which are deemed made as of both the date and the recordation of this Deed of Trust:

a. **Capacity.** Borrower and the individuals executing Loan Documents on Borrower's behalf have the full power, authority, and legal right to execute and deliver, and to perform and observe the provisions of this Deed of Trust, the Note, the other Loan Documents, and any other document, agreement, certificate, or instrument executed in connection with the Loan, and to carry out the contemplated transactions.

b. **Authority and Enforceability.** Borrower's execution, delivery, and performance of this Deed of Trust, the Note, the other Loan Documents, and any other document, agreement, certificate, or instrument executed in connection with the Loan have been duly authorized by all necessary corporate or other business entity action and do not and shall not require any registration with, consent, or approval of, notice to, or any action by any Person or Governmental Authority. Borrower has obtained or will obtain on or before the recordation of this Deed of Trust all necessary Governmental Authority and other approvals necessary for Borrower to comply with the Loan Documents. This Deed of Trust, the Note, and the other Loan Documents executed in connection with the Loan, when executed and delivered by Borrower, shall

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constitute the legal, valid, binding, and joint and several obligations of Borrower enforceable in accordance with their respective terms.

c. Compliance With Other Instruments. The execution and delivery of this Deed of Trust and the other Loan Documents, and compliance with their respective terms, and the issuance of the Note and other Loan Documents as contemplated in this Deed of Trust, shall not result in a breach of any of the terms or conditions of, or result in the imposition of, any lien, charge, or encumbrance (except as created by this Deed of Trust and the other Loan Documents) on any properties of Borrower, or constitute a default (with due notice or lapse of time or both) or result in an occurrence of an event for which any holder or holders of indebtedness may declare the same due and payable under, any indenture, agreement, order, judgment, or instrument to which Borrower is a party or by which Borrower or its properties may be bound or affected.

d. Compliance With Law. The execution and delivery of this Deed of Trust, the Note, and the other Loan Documents, or any other document, agreement, certificate, or instrument to which Borrower is bound in connection with the Loan, do not conflict with, result in a breach or default under, or create any lien or charge under any provision of any Governmental Requirements to which it is subject and shall not violate any of the Governmental Requirements.

e. Use of Proceeds of Loan. Borrower will use the funds advanced pursuant to the Note to refinance the existing line of credit loan for the Property and for working capital purposes.

f. Material Adverse Events. Since the date of the financial statements delivered to Lender before recordation of this Deed of Trust, neither the condition (financial or otherwise) nor the business of Borrower and the Property have been materially adversely affected in any way.

g. Litigation. There are no actions, suits, investigations, or proceedings pending or, to Borrower's knowledge after due inquiry and investigation, threatened against or affecting Borrower at law or in equity, before or by any Person or Governmental Authority, that, if adversely determined, would have a material adverse effect on the business, properties, or condition (financial or otherwise) of Borrower or on the validity or enforceability of this Deed of Trust, any of the other Loan Documents, or the ability of Borrower to perform under any of the Loan Documents.

h. No Untrue Statements. All statements, representations, and warranties made by Borrower in this Deed of Trust or any other Loan Document and any other agreement, document, certificate, or instrument previously furnished or to be furnished by Borrower to Lender under the Loan Documents (a) are and shall be true, correct, and complete in all material respects at the time they were made and on and as of the recordation of this Deed of Trust, (b) do not and shall not contain any untrue statement of a material fact, and (c) do not and shall not omit to state a material fact necessary to make the information in them neither misleading nor incomplete. Borrower understands that all such statements, representations, and warranties shall be deemed to have been relied on by Lender as a material inducement to make the Loan.

i. Policies of Insurance. Each copy of the insurance policies relating to the Property delivered to Lender by Borrower (a) is a true, correct, and complete copy of the respective original policy in effect on the date of this Deed of Trust, and no amendments or modifications of said documents or instruments not included in such copies have been made, except as stated in Section 35.h. and (b) has not been terminated and is in full force and effect. Borrower is not in default in the observance or performance of its material obligations under said documents or instruments and Borrower has done all things required to be done as of the date of this Deed of Trust to keep unimpaired its rights thereunder.

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j. Financial Statements. All financial statements furnished to Lender are true and correct in all material respects, are prepared in accordance with reasonable accounting principles applied on a consistent basis, acceptable to Lender, and do not omit any material fact the omission of which makes such statement or statements misleading. There are no facts that have not been disclosed to Lender by Borrower in writing that materially or adversely affect or could potentially in the future affect the Property or the business prospects, profits, or condition (financial or otherwise) of Borrower or any Credit Support Party or Borrower's abilities to perform the Obligations and pay the Indebtedness.

k. Taxes. Borrower has filed or caused to be filed all tax returns that are required to be filed by Borrower under the Governmental Requirements of each Governmental Authority with taxing power over Borrower, and Borrower has paid, or made provision for the payment of, all taxes, assessments, fees, and other governmental charges that have or may have become due under said returns, or otherwise, or under any assessment received by Borrower except that such taxes, if any, as are being contested in good faith and as to which adequate reserves (determined in accordance with reasonable accounting principles applied on a consistent basis, acceptable to Lender) have been provided.

l. Title to Property. As of the date of recordation of this Deed of Trust, Borrower holds full legal and equitable title to the Property, subject only to the Permitted Encumbrances. Adequate water, telephone, gas and electrical supply, storm and sanitary sewerage or septic facilities, as required, and any other required public utilities are available for the Property. Adequate means of access exist between the Property and public streets for pedestrians and motor vehicles. The Property currently complies with all Governmental Requirements.

m. Further Acts. Borrower shall, at its sole cost and expense, and without expense to Trustee 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 Trustee or Lender shall from time to time require, for the purpose of better assuring, conveying, assigning, transferring, pledging, mortgaging, warranting, and confirming to Trustee the Property and rights, and as to Lender the security interest as to the Personalty, conveyed or assigned by this Deed of Trust or intended now or later so to be, 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 and, on demand, shall execute and deliver, and authorizes Lender to execute in the name of Borrower, to the extent it may lawfully do so, one or more financing statements, chattel mortgages, or comparable security instruments, to evidence more effectively the lien of this Deed of Trust on the Property.

n. Filing Fees. Borrower shall pay all filing, registration, or recording fees, all Governmental Authority stamp taxes and other fees, taxes, duties, imposts, assessments, and all other charges incident to, arising from, or in connection with the preparation, execution, delivery, and enforcement of the Note, this Deed of Trust, the other Loan Documents, any supplemental deed of trust or mortgage, or any instrument of further assurance.

o. Entity Compliance. As long as it is the owner of the Property, Borrower, if a corporation, limited liability company, or partnership, shall do all things necessary to preserve and keep in full force and effect its existence, franchises, rights, and privileges as such entity under the laws of the state of its incorporation or formation, and shall comply with all Governmental Requirements of any Governmental Authority applicable to Borrower or to the Property or any part of it.

p. No Purchase of Security. Borrower represents and warrants that this Deed of Trust and the Indebtedness secured by this Deed of Trust is for the sole purpose of conducting or acquiring a lawful business, profession, or commercial activity or for the acquisition or management of real or personal property as a commercial investment, and all proceeds of such Indebtedness shall be used for said business



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or commercial investment purpose. Such proceeds shall not be used to purchase any security within the meaning of the Securities Exchange Act of 1934, as amended, or any regulation issued under that Act, including, without limitation, Regulations G, T, and X of the Board of Governors of the Federal Reserve System.

36. **Applicable Law and Venue.** Except as and if otherwise specifically agreed in any Loan Document pertaining to collateral for the Indebtedness, and only as to such Loan Document, and to the extent, if any, that the UCC or other law provides for the application of the law of a different State, this Deed of Trust shall be: (i) governed by and construed in accordance with the internal law of the State of Illinois; and (ii) deemed to have been executed in the State of Illinois. Regardless of any provision herein to the contrary, with respect to procedural matters related to the perfection and enforcement of Lender's rights against the Property, this Deed of Trust will be governed by the laws of the State of Utah. However, if there ever is a question about whether any provision of this Deed of Trust is valid or enforceable, the provision that is questioned will be governed by whichever state law would find the provision to be valid and enforceable. The parties agree that all actions or proceedings arising in connection with this Deed of Trust shall be tried and litigated only in the state courts located in the County of Wasatch, State of Utah, or the federal courts located in the District of Utah. Borrower waives any right Borrower may have to object to or change the venue of any suit, action or other proceeding brought in accordance with this Section or to assert the doctrine of forum non conveniens as to such venue.

37. **Taxation of Deeds of Trust.** In the event of the enactment of any law deducting from the value of the Property any mortgage lien on it, or imposing on Lender the payment of all or part of the taxes, charges, or assessments previously paid by Borrower under this Deed of Trust, or changing the law relating to the taxation of mortgages, debts secured by mortgages, or Lender's interest in the Property so as to impose new incidents of tax on Lender, then Borrower shall pay such taxes or assessments or shall reimburse Lender for them; provided, however, that if in the opinion of Lender's counsel such payment cannot lawfully be made by Borrower, then Lender may, at Lender's option, declare all sums secured by this Deed of Trust to be immediately due and payable upon notice of not less than sixty (60) days to Borrower. Lender may invoke any remedies permitted by this Deed of Trust.

38. **Mechanics' Liens.** Borrower shall pay from time to time when due, all lawful claims and demands of mechanics, materialmen, laborers, and others that, if unpaid, might result in, or permit the creation of, a lien on the Property or any part of it, or on the Rents arising therefrom, and in general shall do or cause to be done everything necessary so that the lien and security interest of this Deed of Trust shall be fully preserved, at Borrower's expense, without expense to Lender; provided, however, that if Governmental Requirements empower Borrower to discharge of record any mechanics', laborer's, materialman's, or other lien against the Property by the posting of a bond or other security, Borrower shall not have to make such payment if Borrower posts such bond or other security on the earlier of (a) ten (10) days after the filing or recording of same or (b) within the time prescribed by law, so as not to place the Property in jeopardy of a lien or forfeiture.

39. **Brokerage.** Borrower represents and warrants to Lender that Borrower has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission, or other sum in connection with the execution of this Deed of Trust, the consummation of the transactions contemplated by this Deed of Trust, or the making of the Loan secured by this Deed of Trust by Lender to Borrower, and Borrower indemnifies and agrees to hold Lender harmless from and against any and all loss, liability, or expense, including court costs and Attorney Fees, that Lender may suffer or sustain if such warranty or representation proves inaccurate in whole or in part.

40. **Liability for Acts or Omissions.** Lender shall not be liable or responsible for its acts or omissions under this Deed of Trust, except for Lender's own gross negligence or willful misconduct, or be liable or

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responsible for any acts or omissions of any agent, attorney, or employee of Lender, if selected with reasonable care.

41. **Releasable Property.** It is contemplated that the Property will be sold by Borrower as single-family residential lots (each, a “Lot”) at small, medium, and large sizes. Notwithstanding anything in this Deed of Trust to the contrary, Lender agrees that after the sale of the Lots, Lender shall from time to time at Borrower’s request, cause this Deed of Trust to be partially released and reconveyed to the extent it affects a Lot upon receipt of an amount equal to the Lot release price for each Lot as set forth on the attached **Exhibit B**. Upon such release and reconveyance, any such Lot will no longer be a part of the Property encumbered hereunder. No release from the lien of this Deed of Trust of any part of the Property by the Lender shall in any way alter, vary or diminish the force or effect of this Deed of Trust on the balance of the Property or the priority of the lien of this Deed of Trust on the balance of the Trust Property.

42. **Notices.** Except as and if otherwise provided herein or as required by Governmental Requirements to be given in another manner, all notices, requests and demands to or upon the respective parties pursuant hereto shall be in writing and shall be deemed to have been given or made five business days after a record has been deposited in the mail, postage prepaid, or one business day after a record has been deposited with a recognized overnight courier, charges prepaid or to be billed to the sender, or on the day of delivery if delivered manually with receipt acknowledged, in each case addressed or delivered:

a. if to Lender, to **The Northern Trust Company, Attention: Credit Administration Team, IL-CD-BB-11, 50 South LaSalle, Chicago, IL 60603**, with a copy to: The Northern Trust Company, Attention: Chief Lending Officer, 4747 Executive Drive, Suite 1100, San Diego, California, 92121.; and

b. if to Borrower, to its address indicated in the preamble hereto,

or to such other address as may be hereafter designated in writing by the respective parties hereto by a notice in accord with this Section.

43. **Statement of Obligations.** Except as otherwise provided by Governmental Requirements, at Lender’s request, Borrower shall promptly pay to Lender such fee as may then be provided by law as the maximum charge for each statement of obligations, Lender’s statement, Lender’s demand, payoff statement, or other statement on the condition of, or balance owed, under the Note or secured by this Deed of Trust.

44. **Application of Payments.** Except as otherwise expressly provided by Governmental Requirements or any other provision of this Deed of Trust, all payments received by Lender from Borrower under the Loan Documents shall be applied first to accrued interest and then to principal; however, if an Event of Default occurs, Lender may, in its sole discretion, and in such order as it may choose, apply any payment to interest, principal and/or lawful charges and expenses then accrued.

45. **Remedies Are Cumulative.** Each remedy in this Deed of Trust is separate and distinct and is cumulative to all other rights and remedies provided by this Deed of Trust or by Governmental Requirements, and each may be exercised concurrently, independently, or successively, in any order whatsoever.

46. **Obligations of Borrower Joint and Several.** If more than one Person is named as Borrower, each obligation of Borrower under this Deed of Trust shall be the joint and several obligations of each such Person.

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47. **Severability.** If any provision of the Loan Documents, or the application of them to the circumstances, is held void, invalid, or unenforceable by a court of competent jurisdiction, the Loan Documents, and the applications of such provision to other parties or circumstances, shall not be affected thereby, the provisions of the Loan Documents being severable in any such instance.

48. **Delegation of Authority.** Whenever this Deed of Trust provides that Borrower authorizes and appoints Lender as Borrower's attorney-in-fact to perform any act for or on behalf of Borrower or in the name, place, and stead of Borrower, Borrower expressly understands and agrees that this authority shall be deemed a power coupled with an interest and such power shall be irrevocable.

49. **Amendments.** This Deed of Trust, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

50. **No Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

51. **Anti-Terrorism Law.**

a. Lender hereby notifies Borrower and any Related Party that, pursuant to the requirements of the USA Patriot Act, Lender may be required to obtain, verify and record information that identifies Borrower and any Related Party, which information may include the name and address of Borrower and any Related Party and other information that will allow Lender to identify Borrower and any Related Party in accord with the USA Patriot Act. Borrower hereby agrees to take any action necessary to enable Lender to comply with the requirements of the USA Patriot Act.

b. Borrower covenants, represents and warrants as follows:

(i) Neither Borrower nor any Related Party is or, to the best of Borrower's knowledge, will be in violation of any Anti-Terrorism Law.

(ii) Neither Borrower nor any Related Party is or, to the best of Borrower's knowledge, will be a Prohibited Person.

(iii) Neither Borrower nor any Related Party: (A) conducts any business or engages in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (C) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(iv) Neither Borrower nor any Related Party will engage in any of the activities described in (iii) of this subsection (b) in the future.

(v) Borrower and each Related Party will ensure that the proceeds of the Loan are not used to violate any foreign asset control regulations of the U.S. Office of Foreign

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Assets Control (“OFAC”) or of any enabling statute or any Executive Order relating thereto.

(vi) Borrower will deliver to Lender any certification or other evidence requested from time to time by Lender in its sole reasonable discretion, confirming Borrower’s and any Related Party’s compliance with this Section.

(vii) Borrower has implemented procedures, and will consistently apply those procedures while this Deed of Trust is in effect, to ensure that the representations and warranties in this Section remain true and correct while this Deed of Trust is in effect.

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

53. **Deficiency.** Borrower agrees to pay any deficiency arising from any cause, to which Lender may be entitled after applications of the proceeds of any Trustee’s sale, and Lender may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law. Borrower agrees for purposes of Utah Code Annotated § 57-1-32 that the value of the Property as determined and set forth in an MAI appraisal of the Property as obtained by Lender on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the “fair market value” of the Property for purposes of Utah Code Annotated § 57-1-32.

54. **Integration.** PURSUANT TO UTAH CODE ANNOTATED § 25-5-4, BORROWER IS NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THAT AGREEMENT, AS EXPRESSED IN THE LOAN DOCUMENTS, MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

55. **General Provisions.**

a. **Successors and Assigns.** Subject to Sections 19 and 20 of this Deed of Trust, this Deed of Trust applies to, inures to the benefit of, and binds, the respective heirs, legatees, devisees, administrators, executors, successors, and assigns of each party to this Deed of Trust. If ownership of the Property becomes vested in a person other than Borrower, Lender, without notice to Borrower, may deal with Borrower’s successors with reference to this Deed of Trust and the Indebtedness and the Obligations by way of forbearance or extension without releasing Borrower from the obligations of this Deed of Trust or liability under the Indebtedness and Obligations.

b. **Meaning of Certain Terms.** As used in this Deed of Trust and unless the context otherwise provides, the words “herein,” “hereunder” and “hereof” mean and include this Deed of Trust as a whole, rather than any particular provision of it.

c. **Authorized Agents.** In exercising any right or remedy, or taking any action provided in this Deed of Trust, Lender may act through its employees, agents, or independent contractors, as Lender expressly authorizes.

d. **Gender and Number.** Wherever the context so requires in this Deed of Trust, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa.

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

e. Captions. Captions and Section headings used in this Deed of Trust are for convenience of reference only, are not a part of this Deed of Trust, and shall not be used in construing it.

f. Time Is of the Essence. As a material inducement and consideration to the parties entering into this Deed of Trust, and but for this provision the parties would not enter into this Deed of Trust, the parties agree that the performance in a timely manner of each deadline set forth in this Deed of Trust before its expiration is of crucial importance to the parties. Failure by a party to timely perform an obligation before the deadline set forth in this Deed of Trust (no matter for what reason, nor how soon thereafter it may have been performed, nor the lack of prejudice to the other party as the result of such nonperformance) shall result in a default by the nonperforming party or the failure of a condition, as appropriate. The parties expressly waive any equitable relief with respect to a missed deadline.

g. Attorneys' Fees. If Lender refers this Deed of Trust or any of the other Loan Documents to an attorney to enforce, construe or defend the same, or as a consequence of any Event of Default as defined in this Deed of Trust, with or without the filing of any legal action or proceeding, Borrower shall pay to Lender, immediately upon demand, the amount of all attorneys' fees and costs incurred by Lender in connection therewith, together with interest thereon from the date of such demand at the rate of interest applicable to the principal balance of the Note. The reference to "attorneys' fees" in this Section 55.g., elsewhere in this Deed of Trust, and in all of the other Loan Documents shall include, without limitation, fees charged by Lender for the services furnished by attorneys who are in its employ, at rates not exceeding those that would be charged by outside attorneys for comparable services.

h. Invalidity of Certain Provisions. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or not fully secured by the lien of this Deed of Trust. If any provision of the Loan Documents shall be deemed void or unenforceable, it shall not affect the validity of the remaining provisions thereof which shall be considered severable.

i. Subrogation. To the extent that proceeds of the Note or advances under this Deed of Trust are used to pay any outstanding lien, charge or prior encumbrance against the Property, such proceeds or advances have been or will be advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

**56. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND (BY ITS ACCEPTANCE HEREOF) LENDER VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST OR ANY LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. BORROWER AND,**

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

**BY ITS ACCEPTANCE OF THE BENEFITS OF THIS DEED OF TRUST, LENDER EACH (A) ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR BORROWER AND LENDER TO ENTER INTO A BUSINESS RELATIONSHIP, THAT BORROWER AND LENDER HAVE ALREADY RELIED ON THIS WAIVER BY ENTERING INTO THIS DEED OF TRUST OR ACCEPTING ITS BENEFITS, AS THE CASE MAY BE, AND THAT EACH SHALL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS, AND (B) FURTHER WARRANTS AND REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS DEED OF TRUST.**

*Signature page to follow*

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

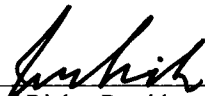
IN WITNESS WHEREOF, Borrower has executed and delivered this Deed of Trust as of the date first written above.

**BORROWER:**

**R&D Benloch Ranch, LLC,**  
a Utah limited liability company

By: J&B Western States Development Group, Inc.,  
a California corporation

Its: Manager

By:  \_\_\_\_\_  
Jeremy Ricks, President

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

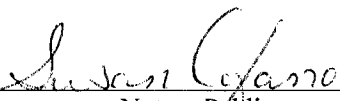
**CERTIFICATE OF ACKNOWLEDGMENT**

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

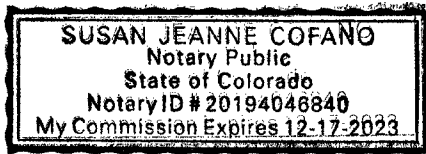
STATE OF COLORADO       )  
  ) ss  
COUNTY OF MESA        )

On December 9, 2021, before me, Susan J. Cofano, a notary public, personally appeared Jeremy Ricks, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

(seal)





**CERTIFICATE OF ACKNOWLEDGMENT**

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

STATE OF CALIFORNIA        )  
  ) ss  
COUNTY OF \_\_\_\_\_        )

On \_\_\_\_\_, 2021, before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(seal)

**EXHIBIT A****REAL PROPERTY DESCRIPTION**

**PART OF THE NORTH HALF OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 5 EAST, AND PART OF THE SOUTH HALF OF SECTION 35, TOWNSHIP 2 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF S.R. 32, SAID POINT BEING N89°31'27"E 7546.18 FEET AND N00°28'33"W 332.51 FEET FROM A FOUND BRASS CAP MONUMENT AT THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 5 EAST (SAID SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 5 EAST BEING S89°31'27"W 16027.88 FEET FROM THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 5 EAST AND BEING THE BASIS OF BEARINGS FOR THIS PROJECT); THENCE ALONG THE SOUTHERLY RIGHT OF WAY LINE OF S.R. 32 THE FOLLOWING FIVE (5) COURSES: (1) N69°06'21"E 582.54 FEET; (2) N69°12'39"E 422.32 FEET; (3) S88°26'59"E 300.00 FEET; (4) N89°39'42"E 324.08 FEET; (5) N82°24'02"E 125.85 FEET; THENCE SOUTH 281.62 FEET; THENCE S16°33'38"W 196.36 FEET; THENCE S73°26'22"E 300.00 FEET; THENCE S16°33'38"W 60.00 FEET; THENCE SOUTH 859.71 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF BENLOCH RANCH ROAD; THENCE ALONG SAID NORTHERLY RIGHT OF WAY THE FOLLOWING FIVE (5) COURSES: (1) N73°50'33"W 177.91 FEET; (2) ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 620.00 FEET, AN ARC LENGTH OF 377.39 FEET, A DELTA ANGLE OF 34°52'31", A CHORD BEARING OF S88°43'12"W, AND A CHORD LENGTH OF 371.59 FEET; (3) S71°16'56"W 805.33 FEET; (4) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 1205.00 FEET, AN ARC LENGTH OF 591.33 FEET, A DELTA ANGLE OF 28°07'00", A CHORD BEARING OF S85°20'26"W, AND A CHORD LENGTH OF 585.41 FEET; AND (5) N80°36'04"W 388.71 FEET TO THE EASTERLY RIGHT OF WAY LINE OF FIRESIDE DRIVE; THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE THE FOLLOWING THIRTEEN (13) COURSES: (1) N09°23'56"E 13.88 FEET; (2) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 95.00 FEET, AN ARC LENGTH OF 76.64 FEET, A DELTA ANGLE OF 46°13'13", A CHORD BEARING OF N32°30'33"E, AND A CHORD LENGTH OF 74.57 FEET; (3) N55°37'09"E 115.57 FEET; (4) ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 190.00 FEET, AN ARC LENGTH OF 317.88 FEET, A DELTA ANGLE OF 95°51'29", A CHORD BEARING OF N07°41'25"E, AND A CHORD LENGTH OF 282.08 FEET; (5) N40°14'20"W 81.39 FEET; (6) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 120.00 FEET, AN ARC LENGTH OF 103.96 FEET, A DELTA ANGLE OF 49°38'16", A CHORD BEARING OF N15°25'12"W, AND A CHORD LENGTH OF 100.74 FEET; (7) N09°23'56"E 56.96 FEET; (8) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 170.00 FEET, AN ARC LENGTH OF 188.66 FEET, A DELTA ANGLE OF 63°35'09", A CHORD BEARING OF N41°11'31"E, AND A CHORD LENGTH OF 179.13 FEET; (9) N72°52'40"E 359.41 FEET; (10) ALONG A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 155.00 FEET, AN ARC LENGTH OF 422.46 FEET, A DELTA ANGLE OF 156°09'47", A CHORD BEARING OF N05°03'41"W, AND A CHORD LENGTH OF 303.32 FEET; (11) N83°08'34"W 80.15 FEET; (12) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 70.00 FEET, AN ARC LENGTH OF 71.15 FEET, A DELTA ANGLE OF 58°14'16", A CHORD BEARING OF N54°01'27"W, AND A CHORD LENGTH OF 68.13 FEET; AND (13) N24°54'19"W 84.46 FEET TO THE POINT OF BEGINNING.**

**EXHIBIT B**

**Lot Release Prices**

1. **Small lots per lot (total number of small lots is 36): \$315,000- \$157,500**
  - a. **Par loan amount – 120% of par appraised value based on fifty percent (50%) loan to value ratio is \$189,000**
  
2. **Medium lots per lot (total number of medium lots is 40): \$425,000- \$212,500**
  - a. **Par loan amount – 120% of par appraised value based on fifty percent (50%) loan to value ratio is \$255,000**
  
3. **Large lots per lot (total number of large lots is 20): \$605,000-\$302,500**
  - a. **Par loan amount – 120% of par appraised value based on fifty percent (50%) loan to value ratio is \$363,000**