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Rhonda Francis Summit County Recorder

10/05/2018 11:28:03 AM Fee \$30.00

By Park City Title

Electronically Recorded

3113

WHEN RECORDED, RETURN TO:

Rouse Enterprises, LLC

701 South Carson Street, Suite 200

Carson City, Nevada 89701

TRUST DEED

THIS TRUST DEED is entered into by and between 440 MAIN, LLC, a Utah limited liability company as **Trustor (also known as "Borrower" on the Trust Deed Promissory Note)**, whose mailing address is 1225 Deer Valley Drive, Suite 201, Park City, Utah, 84060, PARK CITY TITLE COMPANY, as **Trustee**, whose mailing address is 1670 Bonanza Drive, Suite 105, Park City, Utah, 84060 and ROUSE ENTERPRISES, LLC, a Nevada limited liability company and POINTS AND PEAKS, INC., a Nevada corporation (collectively "**Beneficiary**"), whose mailing address is 701 South Carson Street, Suite 200, Carson City, Nevada 89701.

TRUSTOR HEREBY IRREVOCABLY GRANTS, TRANSFERS, CONVEYS, AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, together with any interest therein subsequently acquired by Trustor, real property located at 440 Main Street, Park City, Utah 84060 in Summit County, Utah, commonly described in **Exhibit A** hereto, together with all buildings, fixtures, and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges, and appurtenances thereunto belonging, now or hereafter, used or enjoyed with the subject property, or any part thereof, which shall be hereinafter collectively referred to as the "**Property**", subject, however, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits in the absence of its default.

The above conveyance of the Property to the Trustee shall be for the purpose of securing:

- i. the payment of indebtedness evidenced by a Trust Deed Promissory Note of even date herewith (the "**Note**"), in the initial principal amount of Four Million Two Hundred Fifty Thousand Dollars and no cents (\$4,250,000.00) made by 440 Main, LLC, a Utah limited liability company ("**Borrower**"), and payable to the order of Beneficiary at the times, in the manner, and with the interest as therein set forth;
- ii. the payment of such additional loans or advances as hereafter may be made by Beneficiary to Borrower and Trustor, or its respective successors or assigns, when evidenced by a written note or notes reciting that they are secured by this Trust Deed;
- iii. the performance of each agreement of Trustor and Borrower contained herein or in the Note; and
- iv. the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

TO PROTECT THE SECURITY OF THE TRUST DEED, TRUSTOR HEREBY UNCONDITIONALLY COVENANTS, WARRANTS, AND AGREES AS FOLLOWS:

A. Borrower and Trustor shall promptly pay when due any and all financial obligations pursuant to the Note, and Borrower and Trustor covenant and agree that if any of the provisions of this Trust Deed or the Trust Deed Promissory are in default, that all monies owing under the

Trust Deed Promissory Note are accelerated and immediately become due and payable if such default is not cured thirty (30) days after Borrower and Trustor have received written notice of such default by Beneficiary, Trustee, or Lender (as defined in the Note) (hereinafter "Lender") and such notices provided as provided in Section 26.

B. Trustor is lawfully seized and possessed of good and indefeasible title and estate to the Property and has the right to grant and convey the Property pursuant to this Trust Deed; the lien created hereby shall constitute a first-position lien, financial encumbrance and security interest against the Property; the Property is free and clear of all other liens and financial encumbrances and Trustor will warrant and defend the title to the Property as conveyed herein to Trustee against any and all other claims and demands.

C. Trustor shall comply with all laws, covenants and restrictions affecting the Property, not commit or permit waste thereof, not commit, suffer or permit any act upon the Property in violation of law, and do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

D. Trustor shall provide and maintain insurance on the improvements (including all buildings) now existing or hereafter erected or placed on the Property, including, but not limited to, replacement value of the structure(s), fire and other hazards included within the term "extended coverage." In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness secured hereby or to the restoration or repair of the property damaged. Should Trustor fail to maintain such insurance, Beneficiary may acquire insurance on Trustor's behalf and Trustor shall be liable for the cost thereof.

E. Trustor shall deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance affording "extended coverage" to Lender, and any renewals thereof or supplements thereto.

F. Trustor shall appear in and defend any action or proceeding purporting to affect the Property, the title to the Property, or the rights or powers of Beneficiary or Trustee as they relate to the Property.

G. Trustor shall pay at least fifteen (15) calendar days before delinquency any and all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property. If Trustor fails to pay all taxes and assessments in full and in a timely manner, Beneficiary may pay such taxes and assessments on Trustor's behalf and Trustor will be liable for the cost thereof.

H. Trustor shall promptly pay, when due, any and all encumbrances, charges and/or liens against the Property or any part thereof, including, but not limited to, principal, interest, fees, penalties, legal costs, and attorney fees as appropriate; provided that Trustor may, at its option, bond over any mechanic's lien against the Property in the manner provided under Utah law.

I. Should Trustor and Borrower fail to make any payment or do any act as herein provided, the Beneficiary or Trustee, but without any obligation to do so, and without the need

for prior notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the sole discretionary judgment of either appear to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in their absolute discretion they may deem necessary thereof, including cost of evidence of title, employ counsel, and pay his attorney fees.

J. Trustor and Borrower shall pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee.

K. If Trustor or Borrower shall fail to timely and fully perform any of the above covenants or any of the mutually agreed terms below and continues to fail to perform after thirty (30) days of receiving written notice of such failures, it shall be an event of default.

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake or in any other manner, Beneficiary shall be entitled to that portion of the compensation, awards, and other payments or relief therefor required to satisfy the outstanding obligations of Trustor to Beneficiary hereunder. Such portion of said compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property required to satisfy the obligations of Trustor to Beneficiary hereunder, are hereby assigned to Beneficiary, who may apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

2. As additional security, Trustor hereby assigns to Beneficiary, any and all rents, issues, royalties, and profits of the Property and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default, Trustor's right to collect any such monies shall cease and Beneficiary shall have the right, but in no event the obligation, with or without taking possession of the Property, to collect all rents, royalties, issues, and profits, including, but not necessarily limited to, the right, power and authority, but in no event the obligation, of Beneficiary to enter into new leases and agreements with respect to the Property in an attempt to maximize the revenue to be generated and collected from the Property, and to employ such property managers and/or other agents as may be appropriate to facilitate the same, all at the expense of Trustor to be paid on the same terms as any other payment made by Beneficiary on behalf of Trustor and/or the Property pursuant to this Trust Deed. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option. Nevertheless, in the event of a

default by Trustor, Beneficiary shall have the ability, but not the obligation, to enter into new leases with respect to the Property. Beneficiary shall not, by reason of any of the foregoing, nor by reason of the collection of any rents, be deemed liable to any tenant for any failure of Trustor to perform and comply with any of Trustor's obligations to such tenant. Trustor hereby irrevocably authorizes and directs any tenant of the Property, upon receipt of written notice from Beneficiary that Trustor is in default with respect to its obligations pursuant to this Trust Deed and the Note, to pay Beneficiary all rents and other payments otherwise due and owing to Trustor. Such tenants shall rely upon any such written notice from Beneficiary and shall pay all such rents and other payments to Beneficiary without any obligation or right to inquire as to whether such default actually exists, notwithstanding any claim from Trustor to the contrary.

3. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

4. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

5. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Trust Deed) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity, if any, (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Trust Deed and performs other mortgage loan servicing obligations under the Note, this Trust Deed, and applicable law. There also might be one or more changes of the Loan Servicer, if any, unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the payment of indebtedness evidenced by Note is serviced by a Loan Servicer other than the purchaser of the Note, the obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser. In the event the Note is sold or resold to a Loan Servicer, the Payment Terms (as provided in the Note) shall remain the only terms, obligations, and penalties binding Borrower to its repayment of the Loan Amount (as defined in the Note).

6. **Judicial Action.** Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Trust Deed or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Trust Deed, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 26) of such alleged breach and afforded the other party hereto within thirty (30) days after the giving of such notice to take corrective action. If applicable law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph.

7. Hazardous Substances. As used in this Section 7: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Notwithstanding the foregoing, nothing contained in Section 7 shall constitute a default under this Trust Deed or the Note for the known or unknown presence of any and all Hazardous Substance that were on the Property prior to the execution date of this Trust Deed or the Note.

8. TIME IS OF THE ESSENCE HEREOF. Upon the occurrence of any breach or default with respect to the Trustor's obligations pursuant to this Trust Deed or the related Note, Beneficiary shall have the option to foreclose this Trust Deed by judicial or non-judicial sale or in the manner provided by law for the foreclosure of mortgages and trust deeds on real property.

9. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the Summit County Recorder a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

10. Trustor shall indemnify, defend and hold Trustee and Beneficiary harmless from any and all damages, expenses, claims, liabilities or obligations of any nature whatsoever, whether currently known or unknown, whether liquidated, contingent or otherwise disputed, including, but not limited to, attorney fees and other litigation costs, arising from or in any way related to any environmental issues with the Property that may cause Trustee and/or Beneficiary to be liable for the remediation thereof pursuant to state or federal law, which obligations of Trustor shall survive any reconveyance of this Trust Deed or any judicial or non-judicial sale of the Property in payment of Trustor's financial obligations to Beneficiary secured hereby.

11. Beneficiary, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Trust Deed.

12. Upon the transfer or conveyance of all or any fractional interest in the Property, including the grant of any security interest therein, but not including the grants of security interests previously provided by Trustor to Beneficiary, Beneficiary shall have the unrestricted right to accelerate all payments to be made pursuant to the Note, including, but not limited to, outstanding interest and principal, demand that this Note be immediately paid in full, and Beneficiary shall have the option to foreclose this Trust Deed by judicial or non-judicial sale or in the manner provided by law for the foreclosure of mortgages on real property. Beneficiary may elect to demand payment in full of the Note and foreclose this Trust Deed at any time subsequent to any such transfer, and no delay on the part of Beneficiary in making such demand shall act as a waiver of Beneficiary's right to demand payment in full and commence foreclosure proceedings at some future point in time.

13. The recordation of any financial encumbrance against the Property other than the security interest in favor of Beneficiary evidenced by this Trust Deed, whether voluntary or involuntary on the part of Trustor, shall immediately and automatically constitute a default under the Note and this Trust Deed unless the express written consent of Beneficiary with respect to the financial encumbrance is obtained prior to the recordation thereof, and Beneficiary shall have the option to foreclose this Trust Deed by judicial or non-judicial sale or in the manner provided by law for the foreclosure of mortgages on real property.

14. Any forbearance by Beneficiary or Trustee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy hereunder. Likewise, the waiver by Beneficiary or Trustee of any default of Trustor under this Trust Deed shall not be deemed to be a waiver of any other or similar defaults subsequently occurring.

15. Should any one or more of the provisions of this Trust Deed be determined to be illegal or unenforceable, all other provisions of this Trust Deed shall be given effect separately from the provision or provisions determined to be illegal or unenforceable and shall not be affected thereby.

16. This Trust Deed, or any provision thereof, shall not be construed against Trustor or Beneficiary due to the fact that this Trust Deed, or any provision thereof, was drafted by Trustor or Beneficiary or one of their agents, but rather this Trust Deed shall be construed and interpreted as if it was the product of the joint efforts of Trustor and Beneficiary, with Trustor and Beneficiary each having equal input thereto.

17. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

18. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

19. **Acceleration; Remedies.** Lender shall give thirty (30) days notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Trust Deed and Note. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is received by Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Trust Deed and sale of the Property. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Trust Deed without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section, including, but not limited to, reasonable attorneys' fees and costs of title evidence if Borrower does not cure any noticed default as provided herein.

If the power of sale is invoked, Trustee shall execute and record all documents required by Utah law.

If Borrower and Trustor are the prevailing party, it shall be entitled to collect costs, expenses, and fees incurred in defending its compliance and obedience with the terms, conditions and covenants of this Trust Deed and the Note, including without limitation reasonable attorneys' fees.

20. This Trust Deed shall be governed by the laws of the State of Utah.

21. Trustor or Borrower irrevocably grants, conveys and warrants to Trustee and any successor Trustee, in trust, with power of sale of the Property under Utah law. Trustor or Borrower covenants that it has no right or claim to recover its purchase monies, unless such purchase monies are in excess of the Loan Amount, Interests and Late Fees under the Note.

22. **Reconveyance.** Upon payment of all sums secured by this Trust Deed, Lender shall request Trustee to reconvey the Property and shall surrender this Trust Deed and all notes evidencing debt secured by this Trust Deed to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

23. Should any litigation or other proceeding be commenced by Beneficiary or Trustee against Trustor arising from this Trust Deed, to enforce this Trust Deed, or concerning the rights or duties of any party under this Trust Deed, in addition to any other relief which may be granted, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees

incurred therein.

24. Severability; Rules of Construction. In the event that any provision or clause of this Trust Deed or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Trust Deed or the Note which can be given effect without the conflicting provision.

As used in this Trust Deed: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

24. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at the address first set forth above in this Trust Deed.

25. Notices: All notice shall be delivered as stated below and may be delivered by US Mail or any standard electronic means

To Beneficiary: Rouse Enterprises, LLC
701 South Carson Street, Suite 200
Carson City, Nevada 89701
Email: rickrouse@gmail.com

Copy to: Tesch Law Offices P.C.
P.O. Box 3390
Park City, Utah 84060
Email: joet@teschlaw.com

To Trustor and Borrower: 440 Main LLC
Attn: Matthew B. Hutchinson
1225 Deer Valley Drive, Suite 201
Park City, Utah 84060
Email: matt@hlhparkcity.com

[Signature page to follow]

EXHIBIT A

Legal Description of Property

PARCEL 1 – (Tax Serial No. PC-296)

ALL OF LOT 11, BLOCK 23, AMENDED PLAT OF PARK CITY SURVEY, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE SUMMIT COUNTY RECORDER.

ALSO, BEGINNING AT THE SOUTHEAST CORNER OF LOT 11, BLOCK 23, PARK CITY SURVEY, AND RUNNING THENCE ALONG THE EASTERLY LINE OF SAID BLOCK OF 23 NORTH 23°38' WEST 25.00 FEET TO THE NORTHEAST CORNER OF LOT 11; THENCE LEAVING SAID BLOCK LINE AND RUNNING NORTH 66°22' EAST 50.00 FEET TO A POINT ON SWEDE ALLEY AS CURRENTLY CONSTRUCTED; THENCE SOUTH 23°38' EAST ALONG SWEDE ALLEY 25.00 FEET; THENCE SOUTH 66°22' WEST 50.00 FEET TO THE POINT OF BEGINNING

PARCEL 2 – (Tax Serial No. PC-304-B)

BEGINNING AT THE SOUTHWEST CORNER OF LOT 11, BLOCK 23, PARK CITY SURVEY, AND RUNNING THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 11 NORTH 66°22' EAST 75.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 11, SAID POINT ALSO BEING ON THE EAST LINE OF SAID BLOCK 23; THENCE LEAVING SAID BLOCK LINE AND RUNNING NORTH 66°22' EAST 50.00 FEET TO A POINT ON SWEDE ALLEY AS CURRENTLY CONSTRUCTED; THENCE SOUTH 23°38' EAST 1.65 FEET; THENCE SOUTH 66°44'33" WEST 125.00 FEET; THENCE NORTH 23°38' WEST .83 FEET TO THE POINT OF BEGINNING.