

WHEN RECORDED MAIL TO:

Craig D. Jeffrey, Esq.  
Riley Safer Holmes & Cancila LLP  
70 West Madison St., Suite 2900  
Chicago, Illinois 60602

File No.: 152822-ETB

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**TRD- TRUST DEED**  
**Rashelle Hobbs, Recorder, Salt Lake County, Utah**  
**Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.**  
**1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121**

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

In Reference to Tax ID Number(s):

14-24-426-001

This Instrument Prepared by and to be Returned to:

Craig D. Jeffrey, Esq.  
Riley Safer Holmes & Cancila LLP  
70 West Madison St., Suite 2900  
Chicago, Illinois 60602

Permanent Tax Index Numbers and Address:  
See Exhibit A

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

**from**

**LAKE PARK PHASE III LLC,  
a Delaware limited liability company**

**as Trustor**

**to and in favor of**

**COTTONWOOD TITLE INSURANCE AGENCY, INC.,  
a Utah corporation**

**as Trustee**

**and**

**CIBC BANK USA,  
an Illinois state chartered bank,  
as Administrative Agent**

**on behalf of**

**THE FINANCIAL INSTITUTIONS PARTY HERETO  
AND THEIR ASSIGNEES,  
as Lenders**

**dated as of January 18, 2022**

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**THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** (as the same may be amended, supplemented or otherwise modified from time to time, this “Deed of Trust”) is made as of January 18, 2022, by **LAKE PARK PHASE III LLC**, a Delaware limited liability company (“Trustor” or “Phase III Borrower” ) to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation (the “Trustee”) for the benefit of **CIBC BANK USA**, an Illinois state chartered bank, and its successors and assigns (“Beneficiary”, and in its capacity as administrative agent, “Administrative Agent”), as administrative agent for each of the financial institutions identified on Schedule 1 hereto and their successors and assigns (collectively, the “Lender”) in accordance with the terms of the Loan Agreement (as defined below).

**WITNESSETH:**

Lenders have agreed to make loans (the “Loan”) to (i) Trustor and in the aggregate maximum principal amount of Thirty Million Nine Hundred Eighty-Four Thousand Three Hundred Sixty-Five and No/100 Dollars (\$30,984,365.00) pursuant to that certain Construction Loan and Security Agreement dated as of even date herewith by and between Phase III Borrower, Beneficiary and Lender, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Construction Loan and Security Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the “Loan Agreement”) and (ii) to Lake Park Phase I LLC, a Delaware limited liability company, and Lake Park Phase II, a Delaware limited liability company (collectively “Phase I and II Borrower”, together with Phase III Borrower, referred to herein as “Borrower”) in the aggregate maximum principal amount of Thirty Three Million Fifteen Thousand Six Hundred Thirty Five and No/100 Dollars (\$33,015,635.00) pursuant to that certain Amended and Restated Construction Loan and Security Agreement dated as of even date herewith by and between Phase I and II Borrower, Beneficiary and Lender. The maximum amount of principal, interest and other indebtedness (now or hereafter owed) secured by this Deed of Trust shall not exceed One Hundred Twenty-Eight Million and No/100 Dollars (\$128,000,000.00). The Loan is due and payable in full on or before the Maturity Date (as defined in the Loan Agreement), except as such date may be extended pursuant to the terms of the Loan Agreement or accelerated pursuant to the terms hereof or of any other Loan Document (as hereinafter defined). This Deed of Trust encumbers certain real estate located in Salt Lake County, Utah, legally described on Exhibit A attached hereto, and payment of the Obligations (as defined in the Loan Agreement) and all other obligations of Borrower are secured by this Deed of Trust, financing statements and other security documents (this Deed of Trust, the Loan Agreement, the Rate Management Agreements (as defined below), and all other documents evidencing or securing the Loan (as amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the “Loan Documents”). As used herein, the term “Rate Management Agreements” shall mean any agreement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, or equity prices, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and any agreement pertaining to equity derivative transactions (e.g., equity or equity index swaps, options, caps, floors, collars and forwards), including without limitation, any ISDA Master Agreement between Trustor and Beneficiary, and any schedules, confirmations and documents and other confirming

evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time.

Except as otherwise set forth in the Loan Agreement, as of even date herewith, and until the Maturity Date, the Loan will bear interest at a variable rate of interest equal to the Interest Rate (as defined in the Loan Agreement).

To secure (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, and all other indebtedness evidenced by or owing under the Note and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Deed of Trust by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Deed of Trust, the Loan Agreement, the Note and each of the other Loan Documents, and any Rate Management Agreements (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "Debt"), Trustor does hereby irrevocably and unconditionally GRANT, WARRANT, SELL, CONVEY, TRANSFER, MORTGAGE AND ASSIGN to Trustee, in trust, for the benefit and security of Beneficiary, as agent for the Lender, its successors and assigns, all estate, right, title and interest that Trustor now has or may later acquire in and to the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, VIII and IX below, all of same being collectively referred to herein as the "Property":

#### **GRANTING CLAUSE I:**

THE LAND located in Salt Lake County, State of Utah, which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

#### **GRANTING CLAUSE II:**

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of Trustor now or hereafter acquired in and to any of the foregoing, (the "Improvements");

#### **GRANTING CLAUSE III:**

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by Trustor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Land or the Improvements or

other evidence of ownership thereof, and the reversions and remainders thereof (the “Appurtenant Rights”);

#### **GRANTING CLAUSE IV:**

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by Trustor and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring, and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the “Fixtures”); it being agreed that all of said property owned by Trustor and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Deed of Trust.

#### **GRANTING CLAUSE V:**

TOGETHER WITH the following:

All personal property of every nature whatsoever now or hereafter owned by Trustor and used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Trustor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Trustor or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Utah Uniform Commercial Code, as the same may be amended from time to time (the “Code”), of Trustor located on the Land or in the Improvements which are now or in the future owned by Trustor and used or obtained for use in connection with the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof, or any construction on or at the Land or the Improvements;

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or improvements thereon or

proceeds of any sale, option or contract to sell the Land or improvements thereon or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing.

All of the books and records pertaining to the foregoing (all of the foregoing being referred to as the "Personal Property");

#### **GRANTING CLAUSE VI:**

TOGETHER WITH all right, title and interest which Trustor hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property (herein collectively referred to as the "Premises") or any portion thereof, whether written or oral, (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which Trustor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to Trustor any statutory rights;

#### **GRANTING CLAUSE VII:**

TOGETHER WITH any and all Awards and Insurance Proceeds, as each are hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Premises or any portion thereof (provided that no right, consent or authority to sell the Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and Trustor hereby authorizes, directs and empowers Beneficiary, at its option, on Trustor's behalf, or on behalf of the successors or assigns of Trustor, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Property as provided in Section 7 or Section 8 hereof, to payment of the Debt, notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and Trustor agrees to execute and deliver from time to time such further instruments as may be requested by Beneficiary to confirm such assignment to Beneficiary of any such proceeds;

#### **GRANTING CLAUSE VIII:**

TOGETHER WITH all rights reserved to or granted to the developer or declarant under the provisions of any (i) declaration of restrictive covenants and easements affecting the Land or the Premises, or (ii) declaration of condominium ownership for the institution of a regime of condominium ownership affecting the Land or the Premises or otherwise granted to the developer;

#### **GRANTING CLAUSE IX:**

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which Trustor now has or hereafter may acquire of, in and to the Premises, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by Trustor or by anyone on behalf of Trustor to Beneficiary;

TO HAVE AND TO HOLD the Property, unto Beneficiary, and its successors and assigns, IN FEE SIMPLE forever; subject, however, to those encumbrances which Beneficiary has approved in the Loan Agreement or otherwise approved in writing (the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default hereunder, Trustor shall be permitted to possess and use the Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) Trustor or Borrower shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan documents required to be performed and observed by Trustor, and (ii) Beneficiary shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Borrower or Trustor under the provisions of the Loan Agreement, then Beneficiary shall execute and deliver to Trustor such instruments as may be reasonably requested by Trustor which are sufficient to release this Deed of Trust.

NOTWITHSTANDING any provision hereof to the contrary, this Deed of Trust shall secure all future advances made in connection with the Property within ten (10) years from the date hereof, whether such advances are obligatory or are made at the option of Lender pursuant to Lender's rights under the Loan Documents and whether or not such advances are evidenced by the Note, to the same extent as if such advances were made on the date of execution and delivery hereof, with interest on such future advances at the Default Rate (as defined in the Loan Agreement); provided that the aggregate outstanding balance of the Debt shall at no time exceed two hundred percent (200%) of the stated principal amount of the Note. All covenants, warranties and agreements contained in this Deed of Trust shall be equally applicable to future advances.

TRUSTOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

I. Representations of Trustor. Trustor hereby represents and warrants to Beneficiary, as follows:

(a) Trustor (i) is a limited liability company duly formed and validly existing under the laws of the State of Delaware and has complied with all conditions prerequisite to its doing business in the State of Utah, (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) Trustor has good and marketable title to an indefeasible fee simple estate in the Premises, subject to no liens, charges or encumbrances, other than the Permitted

Encumbrances; that it has good, right and lawful authority to mortgage the Property in the manner and form herein provided; that this Deed of Trust is and shall remain a valid and enforceable lien on the Property subject only to the Permitted Encumbrances; that Trustor and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.

(c) As of the date hereof, there has been no material change in the financial condition of Trustor or any guarantor of the Note from that set forth in Trustor's most recent financial statement, and, to the best of Trustor's knowledge, the financial statements of such guarantor, and the financial information contained therein was true and correct on the date the statements were issued and there has been no material adverse change as of the date hereof.

(d) There are no suits or proceedings pending, or to the knowledge of Trustor, threatened against or affecting Trustor, which, if adversely determined, would have a material adverse effect on the financial condition or business of Trustor or its ability to perform its obligations under this Deed of Trust or any of the other Loan Documents executed by it, and there are no proceedings by or before any court, governmental commission, board, bureau, or other administrative agency pending or, to the knowledge of Trustor, threatened against Trustor, which, if adversely determined, would have a material adverse effect on the financial condition or business of Trustor or its ability to perform its obligations under this Deed of Trust or any of the other Loan Documents executed by it.

(e) The Premises complies with all requirements of law, municipal ordinances and restrictions and covenants of record with respect to the Premises and the use thereof.

(f) Trustor has and shall maintain title to the Collateral (as hereinafter defined), including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than the security interest hereunder.

(g) No person who owns twenty percent (20%) or more of the equity interests in Trustor, or otherwise controls Trustor or any of its subsidiaries, is listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, and the proceeds of the Loan will not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

(h) Trustor is able to pay its debts as such debts become due, and has capital sufficient to carry on its present businesses and transactions and all businesses and transactions in which it is about to engage. Trustor (i) is not bankrupt or insolvent, (ii) has not made an assignment for the benefit of its creditors, (iii) has not had a trustee or receiver appointed, (iv) has not had any bankruptcy, reorganization or insolvency proceedings instituted by or against it, or (v) shall not be rendered insolvent by its execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

## 2. Trustor's Covenants.



(a) Payment of Debt. Trustor shall, or shall cause Borrower to, prior to the expiration of any grace period: (i) pay the Debt when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by Borrower or Trustor as provided in the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents.

(b) Repair/Maintenance. Trustor shall (i) promptly repair, restore, replace or rebuild any portion of the Premises which may be damaged or destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction whether or not Insurance Proceeds (as hereinafter defined) are available or sufficient for that purpose; (ii) keep the Premises in good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Premises when due; (iv) comply with all legal requirements applicable to all or any portion of the Premises, or the use and occupancy, thereof (subject to the right of Trustor to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject Trustor or Beneficiary to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Premises or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to Trustor, which would materially increase the risk of fire or other hazard to the Premises or any portion thereof; and (vi) cause the Premises to be managed in a competent and professional manner.

(c) Alteration of the Property. Without the prior written consent of Beneficiary, Trustor shall not cause, suffer or permit (i) any material alteration of the Premises, except as required by any applicable legal requirement or as otherwise contemplated by the Loan Agreement; (ii) any change in the zoning classification or intended use or occupancy of the Premises, including without limitation any change which would increase any fire or other hazard; (iii) any change in the identity of Trustor or the person or entity responsible for managing the Premises; or (iv) any modification of the licenses, permits, privileges, franchises, covenants, conditions or declarations of use applicable to the Premises, except as required to operate the Premises in the manner required hereunder.

(d) Continuing Existence. Until the Debt is paid in full, Trustor, without the prior written consent of Beneficiary, shall not (i) permit itself to be dissolved or its existence terminated, or (ii) amend or modify its organizational documents if such amendment or modification could have a material adverse effect on (A) Trustor's ability to perform its obligations under any of the Loan Documents, or (B) the validity or priority of Beneficiary's liens or security interests under the Loan Documents.

(e) Compliance with Laws. Trustor shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Trustor or to the Premises or any part thereof.

(f) Operating and Reserve Accounts. Trustor shall maintain the operating, escrow, reserve and other accounts, if any, for the Premises with Beneficiary and pledge the same to Beneficiary as additional security for the Loan.

3. Liens, Contest and Defense of Title.

(a) Other than Permitted Encumbrances, Trustor shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder, whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Deed of Trust, including liens for labor or materials with respect to the Premises ("Mechanic's Liens").

(i) Notwithstanding paragraph (a) of this Section, Trustor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Deed of Trust; and (ii) within ten (10) days after Trustor has been notified of the filing of any such Mechanic's Liens, Trustor shall have notified the Beneficiary in writing of Trustor's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens and Trustor shall have deposited with the Beneficiary, at Beneficiary's sole discretion, cash, a letter of credit, a bond, title insurance or other security satisfactory to the Beneficiary; provided further that the Trustor shall thereafter diligently proceed to cause such Mechanic's Liens to be removed and discharged.

If the Trustor shall fail to discharge or so contest any such Mechanic's Liens, then, in addition to any other right or remedy of the Beneficiary, the Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Beneficiary in so doing shall be so much additional indebtedness secured by this Deed of Trust. Except for Permitted Encumbrances and Mechanic's Liens or Taxes being contested as provided herein, in the event that the Trustor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Premises and shall fail to discharge same as described above, the Beneficiary, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Trustor. In settling, compromising or discharging any claims for lien, Beneficiary shall not be required to inquire into the validity or amount of any such claim.

4. Payment and Contest of Taxes.

(a) Trustor shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any

obligation or instrument secured hereby, and all installments thereof (collectively, the "Taxes"), on or before the date such Taxes are due; and Trustor shall discharge any claim or lien relating to Taxes upon the Premises. Trustor shall provide Beneficiary with copies of paid receipts for Taxes, if requested by Beneficiary, within ten (10) days after being requested to do so by Beneficiary.

(i) Notwithstanding paragraph (a) of this Section, Trustor may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Trustor's covenants to pay any such Taxes at the time and in the manner provided in this Section unless no Event of Default has occurred and unless the Trustor has given prior written notice to the Beneficiary of the Trustor's intent to so contest or object to any Taxes, and unless, at the Beneficiary's sole option, (i) the Trustor shall demonstrate to the Beneficiary's satisfaction that legal proceedings instituted by the Trustor contesting or objecting to such impositions shall conclusively operate to prevent the sale or forfeiture of the Premises, or any part thereof, to satisfy such Taxes prior to final determination of such proceedings; and (ii) the Trustor shall furnish a good and sufficient bond, cash, a letter of credit or surety as requested by and satisfactory to Beneficiary, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, adequate fully to pay all such contested Taxes and all interest and penalties upon the adverse determination of such contest.

If the Trustor shall fail to so contest any Taxes, then, in addition to any other right or remedy of the Beneficiary, the Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of any lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Beneficiary in so doing shall be so much additional indebtedness secured by this Deed of Trust. In settling, compromising or discharging any claims for any liens, Beneficiary shall not be required to inquire into the validity or amount of any such claim.

##### 5. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Beneficiary, Trustor or the Property, any tax is imposed or becomes due in respect of the Note or this Deed of Trust (excluding income, excise or franchise taxes imposed upon Beneficiary, except as provided in Section 5(c) below), or any liens on the Property created thereby, then Trustor shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Property for the purpose of taxation by creating any lien thereon, or imposing upon Beneficiary any liability for the payment of all or any part of the Taxes required to be paid by Trustor, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of Beneficiary in the Property, or the manner of collection of Taxes so as to adversely affect this Deed of Trust, the Debt, or Beneficiary, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such Taxes, or reimburse Beneficiary therefor on demand, unless Beneficiary determines, in Beneficiary's sole judgment, that such payment or reimbursement by Trustor is unlawful or that

the payment might, in Beneficiary's judgment, constitute usury or render the Debt wholly or partially usurious; in which event Beneficiary may elect to declare the Debt to be due and payable within the lesser of (i) thirty (30) days after written notice, or (ii) such shorter period as may be required to ensure compliance by Beneficiary with applicable law.

(c) Nothing contained herein shall require Trustor to pay any income, franchise or excise tax imposed upon Beneficiary, excepting only such income, franchise or excise tax which may be levied against the income of Beneficiary as a complete or partial substitute for Taxes required to be paid by Trustor hereunder.

6. Insurance Coverage.

(a) For so long as this Deed of Trust is in effect, Trustor shall continuously maintain insurance as required by the Loan Agreement.

(b) Trustor is hereby notified that unless Trustor provides Beneficiary with evidence of the insurance coverage required by this Deed of Trust, Beneficiary may purchase the required insurance at Trustor's expense to protect Beneficiary's interest in the Premises. This insurance may, but need not, protect Trustor's interests. The coverage that Beneficiary purchases may not pay any claim that Trustor makes or any claim that is made against Trustor in connection with the Premises. Trustor may later cancel any insurance purchased by Beneficiary, but only after providing Beneficiary with evidence that Trustor has obtained insurance as required by this Deed of Trust. If Beneficiary purchases insurance for the Premises, Trustor will be responsible for the costs of that insurance, including interest at the Default Rate and any other charges Beneficiary may impose in connection with the placement of the insurance until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance shall be added to Trustor's total outstanding balance or obligation and shall constitute additional Debt. The costs of the insurance may be more than the cost of insurance Trustor may be able to obtain on its own. Trustor shall pay to the Beneficiary on demand any premiums so paid with interest thereon at the Default Rate set forth in the Note, from the time of the advance for such payment by the Beneficiary, and said advance and interest shall be part of the Debt.

(c) Approval by Beneficiary of any policies of insurance ("Insurance Policies") shall not be deemed a representation by Beneficiary as to the adequacy of coverage of such Policies or the solvency of the insurer.

7. Casualty Loss; Proceeds of Insurance.

(a) Trustor will give Beneficiary prompt written notice of any loss or damage to the Premises, or any part thereof, by fire or other casualty.

(b) In case of loss or damage covered by any one of the Insurance Policies in excess of the One Hundred Ninety Thousand and No/100 Dollars (\$190,000.00) for any one building located at the Premises (the "Threshold Amount"), Beneficiary is hereby authorized to settle and adjust any claim under such Insurance Policies (and after the entry of a decree of foreclosure, or a sale or transfer pursuant thereto or in lieu thereof, the decree creditor or such purchaser or transferee, as the case may be, are hereby authorized to settle and adjust any claim under such Insurance Policies) upon consultation with, but without requiring the consent of,

Trustor; and Beneficiary shall, and is hereby authorized to, collect and receipt for any and all proceeds payable under such Insurance Policies in connection with any such loss (collectively, the “Insurance Proceeds”). Trustor hereby irrevocably appoints Beneficiary as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of one hundred percent (100%) of all such losses (if such loss exceeds said amount) directly to Beneficiary alone, and (ii) of one hundred percent (100%) of all such losses (if such loss is less than or equal to said amount) directly to Trustor alone, and in no case to Trustor and Beneficiary jointly. All reasonable costs and expenses incurred by Beneficiary in the adjustment and collection of any such Insurance Proceeds (including without limitation reasonable attorneys’ fees and expenses) shall be so much additional Debt, and shall be reimbursed to Beneficiary upon demand or may be paid and deducted by Beneficiary from such Insurance Proceeds prior to any other application thereof. Beneficiary shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure, other than the gross negligence or willful misconduct of Beneficiary.

(c) Net Insurance Proceeds received by Beneficiary under the provisions of this Deed of Trust or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Property or any part thereof shall be applied by Beneficiary at its option as and for a prepayment on the Note, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for restoration of such improvements (“Restoration”), in which event Beneficiary shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note. If Beneficiary elects to permit the use of Insurance Proceeds to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds and all such additional funds shall constitute part of the Debt. If Beneficiary elects to make the Insurance Proceeds available to Trustor for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of Insurance Proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment on the Note, without a prepayment fee or premium. No interest shall be payable to Trustor upon Insurance Proceeds held by Beneficiary.

(d) Notwithstanding the provisions of Section 7(c) above, in case of loss or damage covered by any one of the Insurance Policies is equal to or less than the Threshold Amount, Beneficiary agrees to allow the Insurance Proceeds to be disbursed for Restoration provided: (i) no Event of Default, and no Unmatured Default (as defined in the Loan Agreement) with which the passage of time or giving of notice would constitute an Event of Default, shall exist; (ii) Beneficiary shall be satisfied in its sole and absolute discretion, that by expenditure of the Insurance Proceeds hereunder the Premises damaged or destroyed shall be fully restored within a reasonable period of time to the condition and value contemplated by this Deed of Trust and the Restoration Plans (as hereinafter defined), and all payments required under the Loan will continue to be paid as and when the same become due and payable; (iii) in Beneficiary’s good faith judgment, such work of repair and restoration can be completed in the ordinary course of business not later than the earlier of (A) three (3) months prior to the Maturity Date; (B) the outside date, if any, under any Lease or any federal, state, county, municipal or other governmental statute, law, rule, order, regulation, ordinance, judgment, decree or injunction, or any permit, license, covenant, agreement, restriction or encumbrance; (iv) no Lease may be terminated as a result of the casualty or other event resulting in the claim for payment of such Insurance Proceeds; (v) the Insurance

Proceeds do not exceed the Threshold Amount; (vi) Beneficiary shall have reviewed and approved Trustor's plans and specifications for the repair and restoration of the Property involving costs in excess of the Threshold Amount (the "Restoration Plans"), Trustor's architect and any general contractors, subcontractors and material suppliers employed to perform such work; (vii) if so required by Beneficiary in its absolute and sole discretion, all general contractors, all major subcontractors, and material supplies shall have supplied one hundred percent (100%) performance and completion bonds or shall have provided evidence of a construction subguard insurance policy; (viii) if the net Insurance Proceeds available are insufficient for payment of the full cost of restoration or repair and the payments under the Loan during the completion period, as estimated by Beneficiary, then Trustor shall have deposited with Beneficiary sufficient additional funds to insure payment of all such costs, or made arrangements acceptable to Beneficiary for such sufficient additional funds; (ix) rent loss or business interruption insurance is available to cover the full amount of any loss of income from the Premises during its repair and restoration; (x) Trustor shall provide evidence of the implementation of builder's risk coverage for the Premises with coverage and in such amounts as Beneficiary shall request and which otherwise complies with the insurance requirements set forth in Section 6 hereof; and (xi) Trustor shall have satisfied such other conditions as Beneficiary may in good faith determine to be appropriate.

(e) Subject to the foregoing provisions of this Section 7, so long as any Debt shall be outstanding and unpaid, and whether or not Insurance Proceeds are available or sufficient therefor, Trustor shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence, the Restoration of the Premises as nearly as possible to the same value, condition and character which existed immediately prior to such loss or damage in accordance with the Restoration Plans and in compliance with all legal requirements. Any Restoration shall be effected in accordance with procedures to be first submitted to and approved by Beneficiary in accordance with Section 9 hereof. Trustor shall pay all costs of such Restoration to the extent Insurance Proceeds are not made available or are insufficient.

#### 8. Condemnation and Eminent Domain.

(a) Any and all awards (the "Awards") in excess of the Threshold Amount heretofore or hereafter made or to be made to Trustor (or any subsequent owner of the Premises, or any part thereof) by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Trustor to Beneficiary, which Awards Beneficiary is hereby authorized to collect and receive from the condemnation authorities, and Beneficiary is hereby authorized to appear in and prosecute, in the name of and on behalf of Trustor, any action or proceeding to enforce any such cause of action in which an award in excess of the Threshold Amount is sought and to make any compromise or settlement in connection therewith and to give appropriate receipts and acquittance therefor in the name and in behalf of Trustor. Trustor shall give Beneficiary immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to Beneficiary copies of any and all papers served in connection with any such proceedings. All reasonable costs and expenses incurred by Beneficiary in the adjustment and collection of any such Awards (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Debt, and shall be reimbursed to

Beneficiary from any Award prior to any other application thereof. Trustor further agrees to make, execute and deliver to Beneficiary, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever (other than Permitted Encumbrances), any and all further assignments and other instruments deemed necessary by Beneficiary for the purpose of validly and sufficiently assigning all Awards in excess of the Threshold Amount and other compensation heretofore and hereafter made to Trustor for any permanent taking, under any such proceeding.

(b) The proceeds of any Award received by Beneficiary under the provisions of this Deed of Trust or any instrument supplemental hereto shall be applied by Beneficiary at its option as and for a prepayment of the Debt, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for Restoration of the Premises, in which event Beneficiary shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the Debt. If Beneficiary elects to permit the use of the proceeds of an Award to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds, all such additional funds to constitute part of the Debt. If Beneficiary elects to make the proceeds of an Award available to Trustor for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of such proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment of the Debt, without a prepayment fee or premium. No interest shall be payable to Trustor upon such proceeds held by Beneficiary.

(c) Notwithstanding the provisions of Section 8(b) above, Beneficiary agrees to allow the Award to be disbursed for Restoration provided: (i) all conditions to the use of casualty proceeds under Section 7(d) have been satisfied, and (ii) the condemnation, in the judgment of Beneficiary, shall have no material adverse effect on the operation or value of the Premises remaining after the condemnation is completed, and (iii) Trustor shall have satisfied such other conditions as Beneficiary may in good faith determine to be appropriate.

(d) So long as any Debt shall be outstanding and unpaid, and whether or not Awards are available or sufficient therefor, Trustor shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence the Restoration of the portion of the Premises not so taken as nearly as possible to the same value, condition and character, which existed immediately prior to such taking in compliance with all legal requirements. Any Restoration of the Premises involving costs in excess of the Threshold Amount shall be effected in accordance with Restoration Plans to be first submitted to and approved by Beneficiary as provided in Section 9 hereof. Trustor shall pay all costs of such Restoration to the extent the Award is not made available or is insufficient.

9. Disbursement of Insurance Proceeds and Awards.

(a) All Insurance Proceeds and/or Awards received by Beneficiary as provided in Section 7 or Section 8 hereof shall, after payment or reimbursement therefrom of all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by Beneficiary in the adjustment and collection thereof (collectively, the "Net Proceeds"), shall be deposited with Beneficiary, or such other depository as may be designated by Beneficiary, and applied as provided in this Section.

(b) Subject to the terms of Section 7 and Section 8 hereof, Beneficiary may elect to apply the Net Proceeds to prepayment of the Debt, whether then due or not. If the Debt is not prepaid in full, then the Net Proceeds shall be applied to the installments of principal and interest in the inverse order of maturity.

(c) All Net Proceeds which are not applied to the payment of the Debt shall be applied to fund the payment of the costs, fees and expenses incurred for the Restoration of the Premises as required under Section 7 or Section 8 hereof and such Net Proceeds shall be disbursed through a title company which has insured the lien of the Deed of Trust to complete the Restoration; provided that Beneficiary shall receive the following:

(i) Restoration Plans (unless the costs involved in such Restoration shall not exceed the Threshold Amount), which shall be subject to the reasonable approval of Beneficiary prior to the commencement of the Restoration.

(ii) Such architect's and engineer's certificates, waivers of lien, contractor's sworn statements, payment and performance bonds (if applicable), title insurance endorsements, plats of survey, opinions of counsel and such other evidences of cost, payment and performance as Beneficiary may reasonably require and approve.

(d) If Trustor shall fail to commence Restoration within thirty (30) days after the settlement of the claim involving loss or damage to the Premises, and diligently proceed to complete Restoration in accordance with the Restoration Plans and Applicable Laws (as defined in the Loan Agreement), or if any other Event of Default shall occur hereunder at any time (whether before or after the commencement of such Restoration), all or any portion of the Debt may be declared to be immediately due and payable and such Net Proceeds, or any portion thereof, then held, or subsequently received, by Beneficiary or other depository hereunder may be applied, at the option and in the sole discretion of Beneficiary, to the payment or prepayment of the Debt in whole or in part, or to the payment and performance of such obligations of Trustor as may then be in default hereunder.

(e) Any surplus which may remain out of such Net Proceeds after payment of all costs, fees and expenses of such Restoration shall be applied to prepayment of the Debt, without the payment of a prepayment fee or prepayment premium.

10. Beneficiary's Performance of Trustor's Obligations.

(a) Upon the occurrence of an Event of Default hereunder, Beneficiary may, but without any obligation to do so, upon simultaneous notice to Trustor, make any payment or perform any act which Trustor is required to make or perform hereunder or under any other Loan Document (whether or not Trustor is personally liable therefor) in any form and lawful manner deemed expedient to Beneficiary, including without limitation, the right to enter into possession of the Premises, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Premises, Trustor and the obligations secured hereby) which Beneficiary deems necessary or desirable in connection therewith, all at the sole cost and expense of Trustor. Beneficiary, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may complete construction of, rent, operate, and manage the



Premises, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and attorneys' fees and expenses and other monies advanced by Beneficiary to protect the Premises and the lien hereof, to complete construction of, rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and usable for their intended purposes shall be so much additional Debt, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate.

(b) Beneficiary, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require Beneficiary to advance or expend monies for any purpose mentioned herein, or for any other purposes.

#### 11. Security Agreement.

(a) Grant of Security Interest. Trustor hereby grants to Beneficiary a security interest in the Personal Property to secure the Debt. This Deed of Trust constitutes a security agreement with respect to all Personal Property in which Beneficiary is granted a security interest hereunder, and Beneficiary shall have all of the rights and remedies of a secured party under the Code as well as all other rights and remedies available at law or in equity.

(b) Perfection. Trustor hereby consents to any instrument that may be requested by Beneficiary to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Deed of Trust or the interest of Beneficiary in the Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Trustor shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, actual attorneys' fees and costs (of both in house and outside counsel), incurred by Beneficiary in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Trustor hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Trustor hereby irrevocably constitutes and appoints Beneficiary as the attorney-in-fact of Trustor, to file with the appropriate filing office any such instruments. In addition, Trustor hereby authorizes Beneficiary to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Trustor.

(c) Place of Business. Trustor maintains its chief executive office as set forth as the address of Trustor in Section 30 below, and Trustor will notify Beneficiary in writing of any change in its place of business within five (5) days of such change.

(d) Fixture Filing. This Deed of Trust is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a “fixture filing” in accordance with the Code.

(e) Representations and Warranties. Trustor represents and warrants that: (i) Trustor is the record owner of the Property; (ii) Trustor’s chief executive office is located in the State of Illinois; (iii) Trustor’s state of organization is the State of Delaware; (iv) Trustor’s exact legal name is as set forth on Page 1 of this Deed of Trust; (v) Trustor’s organizational identification number is 7391443; (vi) Trustor is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof; (vii) the Personal Property will not be removed from the Property without the consent of Beneficiary; and (viii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto. The following addresses are the mailing addresses of the Trustor, as debtor under the Code, and the Beneficiary, as secured party under the Code, respectively:

Trustor: Lake Park Phase III LLC  
c/o Hamilton Partners  
Attn: Timothy Stephens  
222 S. Main Street, Suite 1760  
Salt Lake City, UT 84101

Beneficiary: CIBC Bank USA  
120 South LaSalle Street  
Chicago, Illinois 60603

12. Disposal and Encumbrance of Property and Transfers. Trustor shall not, without Administrative Agent's prior written consent (unless such consent is not required, as expressly provided in the Loan Documents), suffer, permit or enter into any agreement for any sale, lease, transfer, or in any way encumber or dispose of or grant or suffer any security interest or other assignment (collateral or otherwise) of or in all or any portion of the Premises. Any consent given by Administrative Agent or any waiver of default under this Section 12, shall not constitute a consent to, or waiver of any right, remedy or power of Administrative Agent under any subsequent default hereunder. Notwithstanding anything to the contrary contained in this Loan Documents:

(1) the transfers described in subsections (i), (ii), (iii), (iv) and (v) of this paragraph (1) shall not be considered “Prohibited Transfers” under the Loan Documents, provided that following such transfers, (A) HP Lake Park I LLC, a Utah limited liability company (“HP Lake Park”) shall continue to be the managing member of BRHP OZ JV I LLC, a Delaware limited liability company (the “Sole Member”) and there shall be no change in the Control of the Trustor from the Control thereof that exists on the date of this Deed of Trust; and (B) any two (2) of Ronald Lunt, Kirk Hamilton, Mark Hamilton, George Arnold, or Bruce Bingham are the managing members of HP Lake Park, and any one or more of Ronald Lunt, Kirk Hamilton, Mark Hamilton, George Arnold or Bruce Bingham, collectively or individually, together with their families and trusts or other entities primarily for the benefit of any of the foregoing, own at least 51% of the membership interests in HP Lake Park.

In addition, prior to effectuating any such transfer described in subsections (i), (ii), (iii) (other than upon death, in which event Trustor shall comply with such requirements within forty-five (45) days after such occurrence), (iv) and (v) of this paragraph (1) to the extent any transferee will own 20% or more (or such other minimum percentage ownership interest as required by then-applicable law or then-applicable regulatory requirements) of the direct or indirect ownership interest ownership interest in Trustor immediately following such transfer, such transferee shall deliver to Administrative Agent such information and documentation as may reasonably be requested by Administrative Agent for purposes of compliance by Administrative Agent with applicable beneficial ownership regulation and any other applicable laws (including without limitation the Patriot Act and other "Know Your Customer" and anti-money laundering rules and regulations), and any policy or procedure implemented by Administrative Agent to comply therewith.

Notwithstanding anything contained in the Loan Documents to the contrary, the following transfers of legal or beneficial equity interests shall not be deemed to be a Prohibited Transfer and shall not require the consent of Administrative Agent:

- (i) transfers of a direct or indirect interest in Trustor;
- (ii) transfers of a member's or partner's direct or indirect interest in Trustor if the transfer is to a family member or a trust or entity created for the benefit of the member, partner or a family member for estate planning purposes;
- (iii) transfers of direct or indirect interests in Trustor by operation of law or upon death by devise or descent;
- (iv) transfers of direct or indirect interests in Bow River Capital OZ I, LLC, a Delaware limited liability company ("Bow River"); and
- (v) transfers by Bow River of all or any portion of its membership interest in the Sole Member.

(2) A transfer of the direct ownership interests in the Sole Member, or removal of a managing member of the Sole Member, in each case to the extent permitted by the terms of

(vi) Sections 8.12, 8.14, 10.5, 10.6, or 10.7 of the Amended and Restated Limited Liability Company Operating Agreement of the Sole Member dated May 3, 2019, shall not be considered a "Prohibited Transfer" under the Loan Documents, provided that if any such transfer causes a change in the Control of the Trustor from the Control thereof that exists on the date of this Deed of Trust, then the following requirements shall be satisfied: The proposed transferee is not a Sanctioned Person and, to the extent that proposed transferee will own 20% or more (or such other minimum percentage ownership interest as required by then-applicable law or then-applicable regulatory requirements) of the direct or indirect ownership interest in Trustor immediately following such transfer, satisfies any regulatory requirements of Administrative Agent (including, without limitation, beneficial ownership regulations, anti-money laundering rules and regulations "Know Your Customer" requirements and the requirements of the USA Patriot Act of 2001). The proposed transferee (to the extent it will own 20% or more (or such other

minimum percentage ownership interest as required by then-applicable law or then-applicable regulatory requirements) of the direct or indirect ownership interest in Trustor immediately following such transfer) shall deliver to Administrative Agent such information and documentation as may reasonably be requested by Administrative Agent for purposes of compliance by Administrative Agent with beneficial ownership regulations, anti-money laundering rules and regulations, "Know Your Customer" requirements and the requirements of the USA Patriot Act of 2001, any other applicable laws, and any policy or procedure implemented by Administrative Agent to comply therewith.

(vii) Trustor delivers an updated organizational chart of Trustor showing the change in direct or indirect ownership of Trustor immediately following the transfer.

(viii) To the extent any such transfer will result in HP Lake Park owning no direct or indirect interest in the Sole Member or ceasing to Control the day-to-day management and operation of the Sole Member, the proposed transferee submits to a credit check and other customary searches, the results of which are acceptable to Administrative Agent in its reasonable discretion.

(ix) To the extent any such transfer will result in HP Lake Park owning no direct or indirect interest in the Sole Member or ceasing to Control the day-to-day management and operation of the Sole Member, the proposed transferee provides its organizational documents to Administrative Agent in order for Administrative Agent to confirm that the ownership and management of such transferee as set forth in such organizational documents (A) are as shown on the updated organizational chart delivered to Administrative Agent pursuant to clause (ii) above and (B) comply with any applicable requirements set forth in the Loan Documents.

(x) To the extent any such transfer will result in HP Lake Park owning no direct or indirect interest in the Sole Member or ceasing to Control the day-to-day management and operation of the Sole Member, and the proposed transferee is offered as a replacement guarantor pursuant to clause (vi) below, then such proposed transferee's financials are acceptable to Administrative Agent in its reasonable discretion, subject to the terms of subsection (vi) below.

(xi) To the extent any such transfer will result in HP Lake Park owning no direct or indirect interest in the Sole Member or ceasing to Control the day-to-day management and operation of the Sole Member, (A) Trustor shall have provided one or more replacement guarantors acceptable to Administrative Agent in its reasonable discretion for the individual Guarantors affiliated with HP Lake Park and such replacement guarantor or guarantors shall have an aggregate net worth equal to or greater than Twenty Million and No/100 Dollars (\$20,000,000.00) as determined by Administrative Agent in its reasonable discretion, and which replacement guarantors shall execute (a) a new guaranty that and shall otherwise be in form and substance substantially similar to the Guaranty (the "Replacement Guaranty"), and (b) a new Environmental Indemnity Agreement in form and substance substantially similar to the Indemnity Agreement (the "Replacement Indemnity Agreement"), and (B) Trustor shall have provided to

Administrative Agent a replacement property management agreement with a Qualified Manager. The guarantors affiliated with HP Lake Park shall be released from liability under the Loan Documents with respect to events occurring from and after the date of such replacement, provided that a replacement guarantor or guarantors and Trustor, as applicable, have executed and delivered to Administrative Agent the Replacement Guaranty and the Replacement Indemnity Agreement and no default exists or Event of Default has occurred (and which has not otherwise been waived in writing by Administrative Agent) under the Loan Documents.

(xii) To the extent any such transfer will result in HP Lake Park ceasing to Control the Sole Member, Bow River (or if Bow River has no direct or indirect interest in Sole Member, then another replacement managing member(s) or replacement manager(s) acceptable to Administrative Agent in its sole discretion) shall be appointed as the replacement managing member(s) or replacement manager(s) of the Sole Member.

(xiii) If such transfer occurs prior to the substantial completion of the Work in accordance with this Deed of Trust, then (A) the party proposing the transfer (the "Removal Party") shall deliver to Administrative Agent a list of not less than three (3) potential Qualified Developers prior to the occurrence of such transfer, (B) Administrative Agent shall approve or disapprove same in its sole and absolute discretion by written notice to the Removal Party, and (C) prior to or contemporaneously with any such transfer, the Qualified Developer approved by Administrative Agent to be the replacement developer shall have executed a replacement development agreement and replacement collateral assignment and subordination of development agreement in a form and content approved by Administrative Agent in its reasonable discretion and shall have assumed the obligations of developer thereunder and under the other Loan Documents in a manner reasonably satisfactory to Administrative Agent.

(xiv) To the extent any such transfer will result in HP Lake Park owning no direct or indirect interest in the Sole Member or ceasing to Control the day-to-day management and operation of the Sole Member, if requested in writing by Administrative Agent, the proposed transferee provides to Administrative Agent an opinion from counsel, in form and substance acceptable to Administrative Agent in its reasonable discretion, confirming the authority of Trustor or any Guarantor under the Loan Documents after giving effect to such transfer.

(xv) If requested in writing by Administrative Agent, the proposed transferee causes the Trustor to enter into a modification of the Loan Documents evidencing such transfer as deemed necessary in Administrative Agent's reasonable discretion.

(xvi) The proposed transferee satisfies such other customary requirements as may be reasonably requested by Administrative Agent.

For the purposes of this Section 12:

**“Control”** shall mean possession by a person or an entity, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by contract, ownership of voting securities, membership or partnership interests or otherwise.

**“Qualified Developer”** shall mean a developer approved by Administrative Agent in its sole discretion that (a) is a reputable development company having experience in the development of projects similar in size, product type and quality to the Project (as defined in the Loan Agreement) and (b) is not the subject of a bankruptcy or similar insolvency proceeding.

**“Qualified Manager”** shall mean either (a) Property Manager or (b) another property manager reasonably acceptable to Administrative Agent, or (c) a property manager reasonably acceptable to Administrative Agent which (i) is a reputable management company having experience in the management of projects similar in size to the Property, and (ii) is not the subject of a bankruptcy or similar insolvency proceeding.

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or residing in a country or territory that is, or whose government is, the subject of Sanctions or (c) any Person owned or Controlled by any such Person or Persons described in clauses (a) and (b).

13. Events of Default. Any one or more of the following events shall constitute an “Event of Default” under this Deed of Trust:

(a) If Trustor shall fail (i) to make any payment of principal or interest under the Note when due, or (ii) to make any other payment under the Loan Documents within ten (10) days of the date when due or, if no date is stated, ten (10) days after demand (or such shorter period as may be expressly provided for herein or therein); provided, however, it shall in all events be an Event of Default if all principal and interest due hereunder or under the Note is not paid on the Maturity Date; or

(b) Intentionally Omitted; or

(c) If a Prohibited Transfer shall occur; or

(d) Intentionally Omitted; or

(e) Trustor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Trustor contained in this Deed of Trust and not specifically referred to elsewhere in this Section 13; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by this Deed of Trust or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then the Trustor shall have a period (the “Cure Period”) of thirty (30) days after the Trustor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed

to exist during the Cure Period, provided further that if the Trustor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate; or

(f) If any Event of Default occurs under any other Loan Document.

14. Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Trustor from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Beneficiary may declare the outstanding principal balance of the Note and all unpaid indebtedness of Trustor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Beneficiary shall, with respect to the Collateral, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Trustor at its address set forth in Section 30 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Property in order that the Property, including the Collateral, may be sold as a single parcel if the Beneficiary elects. The Trustor hereby agrees that if the Beneficiary demands or attempts to take possession of the Collateral or any portion thereof in exercise of its rights and remedies hereunder, the Trustor will promptly turn over and deliver possession thereof to the Beneficiary, and the Trustor authorizes, to the extent the Trustor may now or hereafter lawfully grant such authority, the Beneficiary, its employees and agents, and potential bidders or purchasers to enter upon the Premises or any other office, building or property where the Collateral or any portion thereof may at the time be located (or believed to be located) and the Beneficiary may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Collateral or any portion thereof; (iii) maintain, repair or store the Collateral or any portion thereof; (iv) view, inspect and prepare the Collateral or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Collateral or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Collateral, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable upon demand with interest at the Default Rate.

(c) Power of Sale. If any Event of Default occurs, Beneficiary is authorized and empowered, without further notice, to execute or cause the Trustee to execute a written notice of default and of election to cause the Property to be sold as required by law or as otherwise provided

herein, and the Trustee shall file such notice for record in each county wherein the Property or any part thereof is situated. After such filing, the Trustee may lawfully foreclose and shall foreclose the lien of this Deed of Trust, and sell and dispose of the Property in masse or in separate parcels (as Beneficiary may elect) and all the right, title, and interest of Trustor therein, at a public auction at any place then authorized by law as may be specified in the notice of such sale, for the price permitted by law (the "Trustee's Sale"), legally required public notice having previously been given of the time and place of such sale. The Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient in accordance with applicable law, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given as required by law. Trustee shall execute and deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorneys' fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums expended under the terms hereof, not then repaid, with accrued interest as provided herein from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

(d) Election to Foreclose as a Mortgage. Upon the occurrence of a default, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorney fees in such amount as shall be fixed by the court. Trustor hereby waives all rights to the marshalling of Trustor's assets encumbered by the Deed of Trust to the fullest extent permitted by law, including the Property, and all rights to require the Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Deed of Trust as a mortgage shall first be applied to pay all reasonable fees, charges, and costs of conducting such sale and advertising the Property, and attorney fees as herein provided, second to pay Beneficiary the then outstanding amount of the Debt with interests at the rate set forth in the Note, and third to the person so entitled. Beneficiary may purchase all or any part of the Property at such sale. Any purchaser at such sale shall not be responsible for the application of the purchase money. During any redemption period subsequent to such sale, the amount of Beneficiary's bid entered at such sale shall bear interest at the Interest Rate.

(e) Appointment of Receiver. Beneficiary shall, as a matter of right, without notice and without giving bond to Trustor, Member or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Trustor, Member or the then value of the Property, be entitled to have a receiver appointed of all or any part of the Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Trustor and Member hereby consent to the appointment of such receiver and shall not oppose any



such appointment. Any such receiver may, to the extent permitted under Applicable Law, without notice, enter upon and take possession of the Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Trustor, Member or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(f) Taking Possession, Collecting Rents, Etc. Upon demand by Beneficiary, Trustor shall surrender to Beneficiary and Beneficiary may enter and take possession of the Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver, and Beneficiary, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers, and accounts of Trustor relating thereto, and may exclude Trustor and any agents and servants thereof wholly therefrom and may, on behalf of Trustor, or in its own name as Beneficiary and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Trustor;

(ii) cancel or terminate any lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Trustor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Property made subsequent to this Deed of Trust without Beneficiary's prior written consent;

(iv) extend or modify any then-existing leases and make new leases of all or any part of the Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Trustor, all persons whose interests in the Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Property as may seem judicious to Beneficiary, to insure and reinsure the Property and all risks incidental to Beneficiary's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Property, to the payment of taxes, premiums and other charges applicable to the Property, or in reduction of the Debt in such order and manner as Beneficiary shall select, in its sole discretion; and

(vii) receive and collect the rents, issues, profits and revenues of the Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Trustor agrees to consent to a receiver if it is believed necessary or desirable by the Beneficiary to enforce its rights under this subsection. The collection of rents, issues, profits or revenues of the Property by the Beneficiary shall in no way waive the right of the Beneficiary to foreclose this Deed of Trust in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Beneficiary a mortgagee in possession in the absence of the actual taking of possession of the Property. The right to enter and take possession of the Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Beneficiary hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Trustor promises to pay upon demand together with interest thereon at the Default Rate. Beneficiary shall not be liable to account to Trustor for any action taken pursuant hereto other than to account for any rents actually received by Beneficiary. Without taking possession of the Property, Beneficiary may, in the event the Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Debt payable upon demand with interest thereon at the Default Rate.

(g) Indemnity. Trustor hereby agrees to indemnify, defend, protect and hold harmless Beneficiary and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Property, or any part thereof, or as a result of Beneficiary seeking to obtain performance of any of the obligations due with respect to the Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of Beneficiary, its employees, officers or agents.

15. Compliance with Utah Foreclosure Law.

(a) In the event that any provision in this Deed of Trust shall be inconsistent with any provision of Utah law, the provisions of those sections of Utah law shall take precedence over the inconsistent provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with Utah law.

(b) If any provision of this Deed of Trust shall grant to Beneficiary any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Beneficiary under Utah law in the absence of said provision, Beneficiary shall be vested with the rights granted in Utah law to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Beneficiary to the extent reimbursable under this Deed of Trust, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Section 14(c), Section 14(d) or Section 17 of this Deed of Trust, shall be added to the Debt and shall be immediately due and payable by Trustor, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

16. Waiver of Right to Redeem - Waiver of Appraisalment, Valuation, Etc. Trustor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such Moratorium Laws. Trustor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as Beneficiary may determine in its sole discretion. Beneficiary shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Beneficiary so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Beneficiary with the amount payable to Beneficiary out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Trustor acknowledges that the Property does not constitute agricultural real estate or residential real estate. To the fullest extent permitted by law, Trustor, on behalf of Trustor, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Deed of Trust, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption and (ii) any and all rights of reinstatement.

17. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Beneficiary may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Trustor agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

18. Protective Advances.

(a) Advances, disbursements and expenditures made by Beneficiary for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Deed of Trust, constitute "Protective Advances":

(i) all advances by Beneficiary in accordance with the terms of this Deed of Trust to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (B) preserve the lien of this Deed of Trust or the priority thereof; or (C) enforce this Deed of Trust;

(ii) payments by Beneficiary of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Deed of Trust; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Property;

(iii) advances by Beneficiary in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Deed of Trust; (B) in connection with any action, suit or proceeding brought by or against the Beneficiary for the enforcement of this Deed of Trust or arising from the interest of the Beneficiary hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Beneficiary's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and final disposition of the Property;

(vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Deed of Trust;

(vii) expenses deductible from proceeds of sale; and

(viii) expenses incurred and expenditures made by Beneficiary for any one or more of the following: (A) premiums for casualty and liability insurance paid by Beneficiary whether or not Beneficiary or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required

or deemed by Beneficiary to be for the benefit of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Property; (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Debt, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Deed of Trust shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Deed of Trust is recorded.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

(i) determination of the amount of Debt at any time;

(ii) indebtedness found due and owing to the Beneficiary in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment.

19. Application of Proceeds. The proceeds of any foreclosure sale of the Property or of any sale of property pursuant to Section 14(c) or Section 14(d) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Section 14(c) or Section 14(d) and Section 17 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

20. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set

forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by Beneficiary.

(b) By accepting payment of any sums secured by this Deed of Trust after the due date thereof, by accepting performance of any of Trustor's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of Trustor which Trustor was obligated but failed to perform or pay, Beneficiary shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of Trustor's obligations under this Deed of Trust, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Deed of Trust shall be binding on Beneficiary unless set forth in writing signed by Beneficiary and any such waiver by Beneficiary of any Event of Default by Trustor under this Deed of Trust shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If Beneficiary holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Property or any portion thereof.

(c) No act or omission by Beneficiary shall release, discharge, modify, change or otherwise affect the liability of Trustor under the Note, this Deed of Trust, or any of the other Loan Documents, or any other obligation of Trustor, or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Deed of Trust or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by Beneficiary. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Beneficiary in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to Beneficiary by this Deed of Trust is not required to be given.

## 21. Successors and Assigns; Assignment.

(a) This Deed of Trust and each and every provision hereof shall be binding upon Trustor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Property or any other person having an interest therein), and shall inure to the benefit of Beneficiary and its successors and assigns.

(b) All of the covenants of this Deed of Trust shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Property or any portion thereof becomes vested in a person or persons other than Trustor, Beneficiary may, without notice to Trustor, deal with such successor or successors in interest of Trustor with reference to this Deed of Trust and the Debt in the same manner as with Trustor without in any way releasing or discharging Trustor from its obligations hereunder. Trustor will give immediate

written notice to Beneficiary of any conveyance, transfer or change of ownership of the Property, but nothing in this Section shall vary or negate the provisions of Section 12 hereof.

(c) The rights and obligations of Trustor under this Deed of Trust may not be assigned and any purported assignment by Trustor shall be null and void. Beneficiary shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Deed of Trust and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Trustor, and Trustor agrees to cooperate in all respects with Beneficiary in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Beneficiary or such transferee provided that such documents and instruments do not materially adversely affect any of Trustor's duties or obligations under this Deed of Trust and the other Loan Documents.

22. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.

(a) Trustor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Beneficiary shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto Beneficiary all property mortgaged hereby or property intended so to be, whether now owned by Trustor or hereafter acquired. Without limitation of the foregoing, Trustor will assign to Beneficiary, upon request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments reasonably satisfactory to Beneficiary, but no such assignment shall be construed as a consent by Beneficiary to any agreement, contract, license or permit or to impose upon Beneficiary any obligations with respect thereto.

(b) Upon Beneficiary's request, Trustor will furnish, within ten (10) days after request from Beneficiary, a written and duly acknowledged statement of the amount due under the Note and this Deed of Trust and whether any alleged offsets or defenses exist against the Debt.

(c) Trustor and Beneficiary shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Beneficiary or Trustor, as the case may be, to correct such defect, error or omission.

23. Subrogation. If any part of the Debt is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Property or any part thereof, then by advancing the monies to make such payment, Beneficiary shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

24. Governing Law.

(a) Substantial Relationship. The parties agree that the State of Illinois has a substantial relationship to the parties and to the underlying transactions embodied by the Loan Documents.

(b) Place of Delivery. Trustor agrees to furnish to Beneficiary at Beneficiary's office in Chicago, Illinois all further instruments, certifications and documents to be furnished hereunder, if any.

(c) Governing Law. This Deed of Trust and the obligations of Trustor hereunder that affect the Premises shall be governed by and interpreted and determined in accordance with the laws of the State of Utah.

25. Business Loan.

(a) Trustor declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Deed of Trust are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable under the provisions of any applicable law.

26. Escrow Deposits. Following an Event of Default, at Beneficiary's option, and without limiting the effect of Section 4, Section 5, and Section 6 hereof, Beneficiary may require that Trustor pay to Beneficiary on the first business day of each calendar month an amount equal to one-twelfth (1/12th) of what Beneficiary estimates is necessary to pay, on an annualized basis, (1) all Taxes, and (2) all premiums for the insurance policies required under Section 6 hereof ("Premiums") and to enable Beneficiary to pay same at least thirty (30) days before the Taxes would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to Beneficiary additional sums necessary to pay the Premiums and Taxes. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of Beneficiary, and no interest shall be payable thereon. In the event that Trustor does not pay such sums for Premiums and Taxes, then Beneficiary may, but shall not be obligated to, pay such Premiums and Taxes and any money so paid by Beneficiary shall constitute additional Debt hereunder and shall be payable by Trustor to Beneficiary on demand with interest thereon from the date of disbursement by Beneficiary at Default Rate until repaid to Beneficiary. If an Event of Default occurs, Beneficiary shall have the right, at its election, to apply any amounts so held under this Section 26 against all or any part of the Debt, or in payment of the Premiums or Taxes for which the amounts were deposited. Trustor will furnish to Beneficiary bills for Taxes and Premiums not less than thirty (30) days before Taxes become delinquent and such Premiums become due.

27. Assignment of Leases and Other Agreements Affecting the Property. In order to further secure payment of the Debt and the observance, performance and discharge of Trustor's obligations under the Loan Documents, Trustor hereby assigns to Beneficiary all of Trustor's right,



title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases or other agreements affecting the use, enjoyment or occupancy of the Property now or hereafter made affecting the Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even herewith from Trustor to and for the benefit of Beneficiary. Unless and until an Event of Default occurs, Trustor shall be entitled to collect the Rents and Profits (except as otherwise provided in this Deed of Trust) as and when they become due and payable. Neither these assignments nor Beneficiary's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Deed of Trust to any of the rights of any tenant of all or any part of the Property, or to subject Beneficiary to any liability to any such tenant for the performance of any obligations of Trustor under any such Lease unless and until Beneficiary agrees to such subordination or assumes such liability by an appropriate written instrument.

28. Inspection of Premises and Records. Beneficiary and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, upon not less than twenty four (24) hours prior notice to Trustor, and access thereto, subject to the rights of tenants pursuant to Leases. Beneficiary shall use reasonable efforts to avoid disturbing business operations on the Premises during such inspections. Trustor or Beneficiary thereof shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and permit Beneficiary or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

29. Environmental Matters. Concurrently herewith, Trustor shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Beneficiary (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitees under the Environmental Indemnity Agreement shall be secured by this Deed of Trust.

30. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, or (iv) intentionally deleted, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Either party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications:

To Beneficiary:	CIBC Bank USA 120 South LaSalle Street Chicago, Illinois 60603 Attention: Katelyn Brungardt
To Trustor:	Lake Park Phase III LLC c/o Hamilton Partners

Attn: Timothy Stephens  
222 S. Main Street, Suite 1760  
Salt Lake City, UT 84101

31. Releases.

(a) Upon payment in full of all sums due under the Note and this Deed of Trust and the other of the Loan Documents, Beneficiary shall execute and deliver to Trustor a proper release of this Deed of Trust. Trustor shall be responsible for the recordation of such release and the payment of any recording and filing costs.

(b) Beneficiary may, regardless of consideration, cause the release of any part of the Property from the lien of this Deed of Trust without in any manner affecting or impairing the lien or priority of this Deed of Trust as to the remainder of the Property not so released.

32. Indemnification by Trustor. Except to the extent resulting from the gross negligence or willful misconduct of Beneficiary, Trustor shall protect and indemnify Beneficiary from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against Beneficiary or the members, partners, stockholders, directors, officers, agents or employees of Beneficiary by reason of (a) ownership of the Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to Property occurring on or about the Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of Trustor or any guarantor of the Note to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Deed of Trust, the Note, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by Trustor, or any guarantor of the Note, or any other persons directly or indirectly liable for the payment of the Debt, (d) any failure on the part of Trustor to perform or comply with (i) any other agreement executed by Trustor or any guarantor of the Note, or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of Beneficiary in and to the Property, (f) performance of any labor or services or the furnishing of any materials or other Property in respect of the Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against Beneficiary attacking the validity, priority or enforceability of this Deed of Trust, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by Trustor or any other persons directly or indirectly liable for the payment of the Debt. Any amounts payable to Beneficiary under this paragraph shall bear interest at the Default Rate and shall be secured by this Deed of Trust. In the event any action, suit or proceeding is brought against Beneficiary or the members, partners, stockholders, directors, officers, agents or employees of Beneficiary by reason of any such occurrence, Trustor, upon the request of Beneficiary and at Trustor's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Trustor and approved by Beneficiary. Such obligations under this Section shall survive the termination, satisfaction or release of this Deed of Trust.

33. OFAC Covenant. Trustor shall ensure, and cause each of its subsidiaries to ensure, that (i) no person who owns twenty percent (20.00%) or more of the equity interests in Trustor, or otherwise controls Trustor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Orders, (viii) the proceeds of the Loan do not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) it shall comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act (“BSA”) laws and regulations, as amended.

34. Construction Loan. The Note evidences a debt created by one or more disbursements made by Beneficiary to Trustor to finance the cost of the construction of certain Improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Security Instrument is a construction deed of trust as such term is defined in Section 9-334(h) of the Code.

35. Miscellaneous.

(a) Time is of the Essence. Time is of the essence of this Deed of Trust.

(b) Captions and Pronouns. The captions and headings of the various Sections of this Deed of Trust are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) Trustor Not a Joint Venturer or Partner. Trustor and Beneficiary acknowledge and agree that in no event shall Beneficiary be deemed to be a partner or joint venturer with Trustor. Without limitation of the foregoing, Beneficiary shall not be deemed to be such a partner or joint venturer on account of it becoming a mortgagee in possession or exercising any rights pursuant to this Deed of Trust or pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.

(d) Replacement of the Note. Upon notice to Trustor of the loss, theft, destruction or mutilation of the Note, Trustor will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.

(e) Waiver of Consequential Damages. Trustor covenants and agrees that in no event shall Beneficiary be liable for consequential damages, whatever the nature of a failure by Beneficiary to perform its obligation(s), if any, under the Loan Documents, and Trustor hereby expressly waives all claims that it now or may hereafter have against Beneficiary for such consequential damages.

(f) After Acquired Property. The lien hereof will automatically attach, without further act, to all after-acquired Property attached to and/or used in connection with or in the operation of the Property or any part thereof.

(g) Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option declare the Debt immediately due and payable.

(h) Interpretation of Agreement. Should any provision of this Deed of Trust require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Deed of Trust, including, without limitation, all Exhibits attached to this Deed of Trust.

(i) Joint and Several Obligations; Counterparts. If this Deed of Trust is executed by more than one Trustor, (i) the obligations and liabilities of Trustor under this Deed of Trust shall be joint and several and shall be binding upon and enforceable against each Trustor and their respective successors and assigns, and (ii) this Deed of Trust may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Deed of Trust.

(j) Effect of Extensions and Amendments. If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Beneficiary, notwithstanding any such extension, variation or release.

(k) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting Beneficiary a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by Beneficiary pursuant to this Deed of Trust.

(l) No Merger. The parties hereto intend that the Deed of Trust and the lien hereof shall not merge in fee simple title to the Premises, and if Beneficiary acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary as evidenced by an express statement to that effect in an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title and this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title.

(m) Complete Agreement. This Deed of Trust, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Trustor and Beneficiary.

36. JURISDICTION AND VENUE. EACH TRUSTOR AND MEMBER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY TRUSTOR OR MEMBER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS DEED OF TRUST

SHALL BE LITIGATED IN A COURT OF COMPETENT JURISDICTION IN SALT LAKE COUNTY, UTAH, OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH OR, IF BENEFICIARY INITIATES SUCH ACTION, ANY COURT IN WHICH BENEFICIARY SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. EACH TRUSTOR AND MEMBER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY BENEFICIARY IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO TRUSTOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS DEED OF TRUST. EACH TRUSTOR AND MEMBER WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD TRUSTOR OR MEMBER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, TRUSTOR AND MEMBER, AS THE CASE MAY BE, SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY BENEFICIARY AGAINST TRUSTOR AND BENEFICIARY, AS THE CASE MAY BE, AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR TRUSTOR AND MEMBER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY BENEFICIARY OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY BENEFICIARY OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND TRUSTOR AND MEMBER HEREBY WAIVE THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

37. WAIVER OF JURY TRIAL. TRUSTOR AND BENEFICIARY HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG TRUSTOR AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN TRUSTOR AND BENEFICIARY. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

38. ADDITIONAL WAIVERS. TRUSTOR EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY BENEFICIARY ON THIS DEED OF TRUST, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER

THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY BENEFICIARY.

39. Compliance with Loan Agreement. Trustor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

40. Provisions of Loan Agreement. The proceeds of the Note are to be disbursed by Beneficiary in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Trustor covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Trustor for the enforceability of this Deed of Trust and the Note, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured by this Deed of Trust.

41. Rights, Powers and Remedies Cumulative. Each right, power and remedy of Beneficiary as provided for in this Deed of Trust, or in any of the other Loan Documents or now or hereafter existing by Applicable Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Deed of Trust, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Beneficiary of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Beneficiary of any or all such other rights, powers or remedies.

42. No Waiver by Beneficiary. No course of dealing or conduct by or among Beneficiary and Trustor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Loan Documents. No failure or delay by Beneficiary to insist upon the strict performance of any term, covenant or agreement of this Deed of Trust or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Beneficiary from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Beneficiary shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Trustor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Beneficiary to comply with any request of Trustor or of any other Person to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Beneficiary, or (c) Beneficiary's extending the time of payment or modifying the terms of this Deed of Trust or any of the other Loan Documents without first having obtained the consent of Trustor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Beneficiary may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the

time of payment or otherwise modify the terms of this Deed of Trust or any of the other Loan Documents without in any way impairing or affecting the lien of this Deed of Trust or the priority of this Deed of Trust over any subordinate lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Deed of Trust. Beneficiary may resort to the security or collateral described in this Deed of Trust or any of the other Loan Documents in such order and manner as Beneficiary may elect in its sole discretion.

43. Waivers and Agreements Regarding Remedies. To the full extent Trustor may do so, Trustor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Applicable Laws now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisalment, stay of execution, extension and notice of election to accelerate the Obligations;

(b) waives all rights to a marshaling of the assets of Trustor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Applicable Law pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Property without any prior or different resort for collection, or the right of Beneficiary to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Trustor may have or be able to assert by reason of the provisions of any Applicable Laws pertaining to the rights and remedies of sureties.

(e) As used herein, "Claim" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including reasonable attorneys' fees, costs and expenses and fees, costs and expenses of consultants, contractors and experts.

44. Future Advances. This Deed of Trust also secures all future advances made or to be made under the Loan Documents, if any, which future advances shall have the same priority as if all such future advances were made on the date of execution hereof. Nothing in this Section 44 or in any other provision of this Deed of Trust shall be deemed either (a) an obligation on the part

of Beneficiary to make any future advances other than in accordance with the terms and provisions of the Loan Documents, or (b) an agreement on the part of Beneficiary to increase the amount of the loan evidenced by the Note or the aggregate principal amount of the Note, to any amount in excess of One Hundred Twenty-Eight Million and No/100 Dollars (\$128,000,000.00). The Loan is due and payable in full on the Maturity Date, as defined by the Loan Agreement, in the aggregate, except as such date may be extended pursuant to the terms of the Loan Agreement or accelerated pursuant to the terms hereof or of any other Loan Document.

45. Cross-Collateralization. Phase I and II Borrower and Phase III Borrower are Affiliates of one another (as defined in the Loan Agreement) and receive substantial direct and indirect benefits from the business and operations of each other and from credit extended to any of them by Lenders. Trustor hereby acknowledges that in connection with the execution of this Deed of Trust hereby securing the Loan, (i) Phase I LLC, a Delaware limited liability company, is executing an Amended and Restated Construction Deed of Trust, Security Agreement, Fixture Filing and Security Agreement of even date herewith ("Phase I Deed of Trust"), securing the Phases I and II Loan (as such term is defined in the Loan Agreement) and (i) Phase II LLC, a Delaware limited liability company, is executing an Amended and Restated Construction Deed of Trust, Security Agreement, Fixture Filing and Security Agreement of even date herewith ("Phase II Deed of Trust"), together with the Phase I Deed of Trust the "Phase I and II Deeds of Trust"), securing the Phases I and II Loan. Trustor acknowledges and agrees that the security interest granted herein also serves as collateral for the Phases I and II Loan. Any Event of Default under either of these facilities shall constitute a default under this Deed of Trust as well as the Phase I and II Deeds of Trust.

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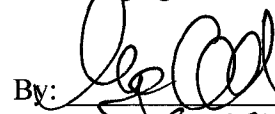
IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed and delivered as of the day and year first above written.

**TRUSTOR:**

**LAKE PARK PHASE III LLC,**  
a Delaware limited liability company

By: BRHP OZ JV I LLC,  
a Delaware limited liability company,  
its Sole Member

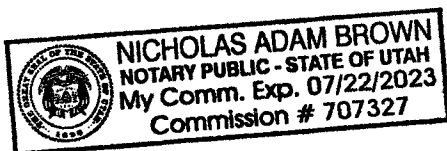
By: HP LAKE PARK I LLC,  
a Utah limited liability company,  
its Managing Member


By:   
Name: George Arnold  
Title: Managing Member

STATE OF UT )  
 ) SS  
COUNTY OF SLC )

On this 10<sup>th</sup> day of January, 2022, personally appeared before me George Arnold, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is a Managing Member of HP Lake Park I LLC, a Utah limited liability company, which is the Managing Member of BRHP OZ JV I LLC, a Delaware limited liability company, which is the Sole Member of Lake Park Phase III LLC, a Delaware limited liability company, and that said document was signed by him on behalf of said company.

WITNESS MY HAND AND OFFICIAL SEAL



  
Printed Name: Nicholas A. Brown  
Notary Public

My commission expires: 07/22/2023

**SCHEDULE 1**

COMMITMENT AMOUNT/PERCENTAGE

<u>Bank</u>	<u>Commitment Amount</u>	<u>Commitment Percentage</u>	
<b>CIBC Bank USA</b> 120 S. LaSalle Street Chicago, Illinois 60603 Attn: Katelyn Brungardt	\$ 23,722,404.45	76.5625	%
<b>United Community Bank</b> 3200 W Iles Springfield, IL 6271 Attn: David J Drennan	\$ 7,261,950.55	23.4375	%
•			
•			

**EXHIBIT A**

**LEGAL DESCRIPTION**

PARCEL 1:

LOT 2, LAKE PARK COMMERCE CENTER, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE, RECORDED DECEMBER 3, 2018 AS ENTRY NO. 12896346 IN BOOK 2018P AT PAGE 405.

PARCEL 1A:

A NONEXCLUSIVE EASEMENT APPURTENANT TO PARCEL 1 ABOVE, FOR PURPOSES OF INGRESS AND EGRESS, AS DISCLOSED AND DEFINED IN THAT CERTAIN DECLARATION OF CROSS ACCESS AND UTILITIES EASEMENT AGREEMENT RECORDED DECEMBER 4, 2018 AS ENTRY NO. 12897259 IN BOOK 10735 AT PAGE 7580, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO DECLARATION OF CROSS ACCESS AND UTILITIES EASEMENT AGREEMENT RECORDED JUNE 24, 2020 AS ENTRY NO. 13308163 IN BOOK 10967 AT PAGE 2448 IN THE SALT LAKE COUNTY RECORDER'S OFFICE.

TAX PARCEL NO.: 14-24-426-001

4873-8735-5913, v. 1