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APN: 16-05-330-009-0000 &  
16-05-330-010-0000

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## **DEED OF TRUST AND SECURITY AGREEMENT**

by and among

**RB SALT LAKE LLC and MFJF SALT LAKE LLC,**  
each a Utah limited liability company, as tenants in common  
collectively, as Grantor

to

**First American Title Insurance Company,**  
a Nebraska corporation,  
as Trustee

for the benefit of

**ISRAEL DISCOUNT BANK OF NEW YORK,**  
a New York State chartered bank,  
as Beneficiary

COLLATERAL IS OR INCLUDES FIXTURES AND THIS INSTRUMENT SHALL BE  
EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING IN  
ACCORDANCE WITH UTAH CODE ANN § 70A-9A-502

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## DEED OF TRUST AND SECURITY AGREEMENT

(This document serves as a Fixture Filing under the Uniform Commercial Code - Secured Transactions as adopted by the State of Utah.)

Grantor's organizational identification number: 12619409-0160 and 8170119-0160

This **DEED OF TRUST AND SECURITY AGREEMENT** is executed as of the 17th day of December, 2024 (together with any amendments or modifications hereto in effect from time to time, the “**Deed of Trust**”), by **RB SALT LAKE LLC** (as to an undivided 47.34% tenancy-in-common interest) and **MFJF SALT LAKE LLC** (as to an undivided 52.66% tenancy-in-common interest), each a Utah limited liability company (as tenants-in-common, collectively, the “**Grantor**”), having an office at c/o RD Management, LLC, 810 Seventh Avenue, 10<sup>th</sup> Floor, New York, New York 10019, to **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation (“**Trustee**”), having an address at 215 South State Street, Suite 380, Salt Lake City, Utah 84111, for the benefit of **ISRAEL DISCOUNT BANK OF NEW YORK**, a New York state chartered bank (“**Beneficiary**”), having an office at 1114 Avenue of the Americas, 9th Floor, New York, NY 10036, Attn: Commercial Real Estate Lending Department.

### WITNESSETH:

**WHEREAS**, pursuant to the terms of a Loan Agreement executed of even date herewith between Grantor and Beneficiary (the “**Loan Agreement**”), Grantor is indebted to Beneficiary in the principal sum of One Million Six Hundred Fifty Thousand and No/100 Dollars (\$1,650,000.00) (the “**Loan**”), as evidenced that certain Promissory Note executed of even date herewith by Assignor in favor of Assignee in the principal amount of \$1,650,000.00 (the “**Note**”), together with interest thereon, as evidenced by the Note; and

**WHEREAS**, Grantor is the owner of fee simple title to those certain tracts of land located in Salt Lake County, Utah, as more particularly described in **Exhibit “A”** attached hereto and made a part hereof (the “**Real Estate**”); and

**WHEREAS**, to induce Beneficiary to make the Loan and to secure payment of the Note and the other obligations described below, Grantor has agreed to execute and deliver this Deed of Trust.

### GRANTING CLAUSES

**NOW, THEREFORE**, to secure to Beneficiary (i) the repayment of all sums due under this Deed of Trust, the Note (and all extensions, renewals, replacements and amendments thereof), the Loan Agreement, and the other Loan Documents (as such term is defined in the Note, the “**Loan Documents**”); (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all sums due or that may become due under or in connection with any present or future swap agreements (as defined in 11 U.S.C. §101) between Grantor and Beneficiary; (iv) the repayment of all reimbursement obligations due or that may become due under or in connection with any present or future letters of credit issued by Beneficiary for the account of Grantor; and (v) all other obligations or indebtedness of Grantor to Beneficiary of whatever kind or character and whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees (subsections (i), (ii), (iii), (iv) and (v) collectively,

the “**Liabilities**”), Grantor does hereby irrevocably **grant, bargain, sell, pledge, assign, warrant, transfer, convey, alien, remise, release, mortgage and confirm** to Trustee, in trust with power of sale and right of entry and possession, for the benefit of Beneficiary, all of Grantor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the “**Property**”):

(A) The Real Estate;

(B) Any and all buildings and improvements now or hereafter erected on, under or over the Real Estate (the “Improvements”);

(C) Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, belonging to Grantor, at any time now or hereafter installed in, attached to or situated in or upon the Real Estate, or the buildings and improvements now or hereafter erected thereon, or used or intended to be used in connection with the Real Estate, or in the operation of the buildings and improvements, plant, business or dwelling situate thereon, whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (all of the foregoing herein called the “Service Equipment”), including without limitation: (i) all appliances, furniture and furnishings; all articles of interior decoration, floor, wall and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Real Estate during the course of, or in connection with any construction or repair or renovation of the buildings and improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing;

(D) Any and all leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the “Leases”); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Real Estate, Improvements, Service Equipment or all or any other portion of the Property including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the “Rents”); all of the following personal property (collectively referred to as the “Contracts”): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Real Estate, Improvements, Service Equipment or all or any other portion of the Property or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans,

surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property;

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Real Estate, Improvements or all or any other portion of the Property; all means of access to and from the Real Estate, Improvements or all or any other portion of the Property, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Real Estate, Improvements or all or any other portion of the Property; all rights of Grantor as declarant or unit owner under any declaration of condominium or association applicable to the Real Estate, Improvements or all or any other portion of the Property including, without limitation, all development rights and special declarant rights; and all other claims or demands of Grantor, either at law or in equity, in possession or expectancy of, in, or to the Real Estate, Improvements or all or any other portion of the Property (all of the foregoing described in this subsection E herein called the “**Appurtenances**”);

(F) Any and all of Grantor’s rights and interests, if any, in and to any oil, gas and other hydrocarbons and other minerals produced from or allocated to the Property and all products processed or obtained therefrom, the proceeds thereof, and all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mineral leases (if any) covering the Property or any part thereof; and

(G) Any and all “proceeds” of any of the above-described Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, which term “proceeds” shall have the meaning given to it in Article 9 of the Uniform Commercial Code (Utah Code Annotated § 70A-9a-101 et seq.), as amended, (the “**Code**”) of the State in which the Property is located (collectively, the “**Proceeds**”) and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

**TO HAVE AND TO HOLD** the above granted and conveyed Property unto and to the proper use and benefit of Beneficiary, its successors and assigns, forever, and Grantor does hereby bind itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** the title to the Property unto Trustee, its successors and assigns forever, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject only to the Permitted Exceptions (defined below).

**PROVIDED ALWAYS**, and these presents are upon the express condition, that if (i) all the Liabilities, including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements secured hereunder, are paid in full, (ii) each and every representation, warranty, agreement and covenant of this Deed of Trust and the other Loan Documents are complied with and abided by, and (iii) any swap agreements secured hereunder have

matured or been terminated, then this Deed of Trust and the estate hereby created shall cease and be null and void and canceled of record.

The terms of the Loan Documents are hereby made a part of this Deed of Trust to the same extent and with the same effect as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

**AND** Grantor covenants and agrees with and represents to Trustee and Beneficiary as follows:

1. **FUTURE ADVANCES; PROTECTION OF PROPERTY.** This Deed of Trust shall secure any additional loans as well as any and all present or future advances and readvances under the Liabilities made by Beneficiary to or for the benefit of Grantor or the Property in accordance with Section 10.11(a) of this Deed of Trust.

Grantor agrees that if, at any time during the term of this Deed of Trust or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Grantor fails to perform or observe any covenant or obligation under this Deed of Trust beyond all applicable grace and cure periods, including, without limitation, payment of any of the foregoing, Beneficiary may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Beneficiary shall be added to the amount secured by this Deed of Trust and the other Loan Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with interest at the Default Rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof.

2. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

2.1. **Payment and Performance.** Grantor shall (a) pay to Beneficiary all sums required to be paid by Grantor under the Note and the other Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Loan Documents by which Grantor is bound; and (c) perform and comply with all of Grantor's obligations and duties as landlord under any Leases.

2.2. **Seisin and Warranty.** Grantor hereby warrants that (a) Grantor is seized of an indefeasible estate in fee simple or as a leasehold estate in, and warrants the title to, the Property, subject only to those matters and exceptions set forth in Schedule B, Section I of the ALTA 2021 Title Insurance policy issued by First American Title Insurance Company (Commitment No. 3020-1189340) insuring Beneficiary's interest in the Real Property under this Deed of Trust (the "Permitted Exceptions"); and (b) Grantor has the right, full power and lawful authority to grant, convey and assign the same to Beneficiary in the manner and form set forth herein. Grantor hereby covenants that Grantor shall (a) preserve such title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary against all lawful claims whatsoever, subject only to the Permitted Exceptions; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Beneficiary to protect fully the lien of this Deed of Trust.

2.3. **Insurance.** (a) Grantor shall obtain and maintain at all times throughout the term of this Deed of Trust the following insurance: (i) if Improvements are located on the Real Estate, then,

at the written request of Beneficiary, comprehensive general public liability insurance covering all operations of Grantor in amounts of not less than \$1,000,000 per occurrence, including products and completed operations liability, and \$5,000,000 general aggregate limit, applying per location if the policy covers other locations (with no exclusions for mold); (ii) "All Perils Risk" fire and extended coverage hazard insurance (non-reporting Commercial Property Policy with Special Cause of Loss form) covering the Property in an aggregate amount not less than 100% of the agreed upon full insurable replacement cost of the Property (including wind/hail/named storm, and coverage for loss of rents or business interruption), which policy may have a maximum deductible in line with the market and acceptable to Beneficiary's insurance consultant; (iii) during the course of any construction, reconstruction, remodeling or repair of any Improvements, builders' all-risk extended coverage insurance (non-reporting Completed Value with Special Cause of Loss form) in amounts based upon the completed replacement value of the Improvements (excluding roads, foundations, parking areas, paths, walkways and like improvements) and endorsed to provide that occupancy by any person shall not void such coverage; (iv) if the Property is required to be insured pursuant to the National Flood Insurance Reform Act of 1994, and the regulations promulgated thereunder, flood insurance in an amount at least equal to the lesser of the agreed upon full insurable replacement value of the Property (less any value attributable to the Real Estate) or the maximum limit of coverage available; (v) insurance which complies with the workers' compensation and employers' liability laws of all states in which Grantor shall be required to maintain such insurance; and (vi) such other insurance as Beneficiary may reasonably require. Mortgagee hereby confirms that it is waiving the requirements for hazard insurance as a condition precedent to the Loan closing, but reserves the right reimpose such requirement if all or a portion of the existing Improvements become subject to a Lease or if additional Improvements are constructed on the Property.

(b) Each insurance policy required under this Section shall: (i) be written by an insurance company authorized or licensed to do business in the state within which the Property is located having an A.M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than IX; (ii) be for terms of a least one year, with premium prepaid; (iii) be subject to the reasonable approval of Beneficiary as to insurance companies, amounts, content, forms of policies and expiration dates; and (iv) name Beneficiary, its successors and assigns: (1) as an additional insured under all liability insurance policies, and (2) as the first mortgagee, under a standard non-contributory mortgagee clause, on all property insurance policies and all loss of rents or loss of business income insurance policies.

(c) Grantor further agrees that each insurance policy: (i) shall provide at least thirty (30) days' prior written notice to Beneficiary prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any proceeds due as a result of a loss (other than proceeds due Grantor under a liability policy) shall be payable to Beneficiary in accordance with the terms of such policy notwithstanding any act or negligence of Grantor which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of setoff, counterclaim, deduction or subrogation against Grantor; and (iv) shall exclude Beneficiary from the operation of any coinsurance clause.

(d) At least five (5) days prior to the expiration of any insurance policy, Grantor shall furnish evidence satisfactory to Beneficiary that such policy has been renewed or replaced or is no longer required.

(e) Notwithstanding the foregoing, in the event that Grantor fails to maintain insurance in accordance with this Section 2.3., and Beneficiary elects to obtain insurance to protect its interests hereunder, upon notice to Grantor, Beneficiary may obtain insurance in any amount and of any type Beneficiary deems reasonably necessary to adequately insure and protect Beneficiary's interest only and Beneficiary shall have no duty or obligation to Grantor to maintain insurance in any greater amount or of any other type for the benefit of Grantor. All insurance premiums incurred or paid by Beneficiary shall be at Grantor's sole cost and expense in accordance with Section 1 hereof. Beneficiary's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined) hereunder.

2.4. **Taxes and Other Charges.** Grantor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Grantor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other governmental charges, provided that: (a) Grantor has established on its books or by deposit of cash with Beneficiary, at the option of Beneficiary, a reserve for the payment thereof in such amount as Beneficiary may require; and (b) such contest operates to prevent collection, stay any proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Property to pay such item. Grantor shall promptly provide to Beneficiary, upon request, copies of receipted tax bills, canceled checks or other evidence satisfactory to Beneficiary evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Grantor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Property or any part thereof.

2.5. **Escrows.** If required by Beneficiary following the occurrence of an Event of Default, Grantor shall pay to Beneficiary at the time of each installment of principal and interest due under the Note, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Property, and/or (b) the premiums which will next become due on the insurance policies required by this Deed of Trust, all in amounts as estimated by Beneficiary, less all sums already paid therefor or deposited with Beneficiary for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Beneficiary to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Grantor shall pay to Beneficiary, upon request, such additional amounts as Beneficiary shall estimate to be sufficient to make up any deficiency. No amount paid to Beneficiary hereunder shall be deemed to be trust funds but may be commingled with general funds of Beneficiary and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Beneficiary shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

2.6. **Transfer of Property or Grantor Interests.** (a) Without the prior written consent of Beneficiary in each instance, Grantor shall not cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, nor shall Grantor enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (i) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (ii) the execution of an installment sale

contract or similar instrument affecting all or any portion of the Property; (iii) if Grantor, or any general partner or member of Grantor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity; (iv) if Grantor, or any general partner or member of Grantor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (v) an agreement by Grantor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

(b) The restrictions on transfers set forth in (a) above shall not apply to the following transfers ("**Permitted Transfers**") provided that Grantor provides Beneficiary with advance written notice of such transfer and such documents reflecting the transfer as Beneficiary may request: (A) any transfer of a (direct or indirect) membership interest in Grantor to Immediate Family Members of a current (indirect or direct) member of Grantor, a trust established for the benefit of such Immediate Family Member, and/or an Affiliate; and/or (B) transfers for estate planning purposes of a (direct or indirect) membership interest in Grantor, and/or (C) other transfers of a (direct or indirect) membership interest in Grantor, provided that (i) Guarantor continues to own directly or indirectly at least twenty percent (20%) of the ownership interests in Grantor and Richard Birdoff remains in control of Grantor; and (ii) no Event of Default shall have occurred and remains uncured hereunder or under any of the other Loan Documents. A transfer of any membership interest in Grantor also shall not require the consent of Beneficiary if such transfer occurs by inheritance, devise or bequest or by operation of law upon the death or legal incapacity of a natural person who holds a membership interest in Grantor, provided that such transfer is to an Immediate Family Member or to a trust established for the benefit of such Immediate Family Member. For purposes of this paragraph, an "**Immediate Family Member**" shall mean the lineal descendants of each of the members of Grantor, or any spouse of a member of Grantor, or any spouse of such lineal descendants or a partnership, limited liability company or other entity wholly owned and controlled by such individuals or any group or combination thereof. The terms "**Affiliate**", "**Person**", and "**Control**" shall have the meanings ascribed to such terms in the Loan Agreement.

Notwithstanding the provisions of this Section 2.6, to the extent that any such Permitted Transfer results in a Person other than Guarantor acquiring a direct or indirect interest of ten percent (10%) or more of Grantor or control of Grantor, Grantor shall provide written notice of any such Permitted Transfer to Beneficiary at least thirty (30) days prior to such Permitted Transfer and Grantor shall deliver to Beneficiary searches and documentation regarding such Persons reasonably requested by Beneficiary in writing (including, without limitation, credit, judgment, lien, litigation, bankruptcy, criminal and watch list searches), which search results and documentation shall be reasonably acceptable to Beneficiary. If such search results and/or documentation are not acceptable to Beneficiary, in its reasonable discretion (including without limitation, if such Person is not in compliance with the USA Patriot Act or any such requirements of Governmental Authorities relating to money laundering and terrorism), such transfer shall not be permitted even if such transfer is a Permitted Transfer. Grantor shall be responsible for the costs of any such required searches and the delivery of any such requested documentation.

**2.7. No Encumbrances.** Grantor shall not create or permit to exist any deed of trust, mortgage, pledge, lien, security interest (including, without limitation, a purchase money security



interest), encumbrance, attachment, levy, distraint or other judicial process on or against the Property or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Deed of Trust, without the prior written consent of Beneficiary. Notwithstanding the foregoing, if any lien or encumbrance is filed or entered against the Property without Grantor's consent, Grantor shall have it removed of record within thirty (30) days after Grantor receives notice of the filing.

2.8. **Removal of Fixtures.** If Improvements are located on the Real Estate, Grantor shall not remove or permit to be removed from the Property any fixtures presently or in the future owned by Grantor as the term "fixtures" is defined by the law of the state where the Property is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value). Mortgagee hereby confirms that it has authorized the removal of fixtures located in the existing Improvements in connection with the demolition of such existing Improvements.

2.9. **Maintenance and Repair; Alterations.** (a) Grantor shall (i) abstain from and not permit the commission of waste in or about the Property; (ii) keep the Property (other than the demolition of the existing Improvements on the Real Estate), at Grantor's own cost and expense, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements to the Property (other than the existing Improvements on the Real Estate), whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, or otherwise dispose of all or any part of the Property (other than the proposed demolition of the existing Improvements on the Real Estate). All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Deed of Trust.

(b) Beneficiary, and any persons authorized by Beneficiary, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair provided Beneficiary gives Grantor prior written notice of the exercise of the foregoing rights. In the event any such inspection reveals, in the reasonable discretion of Beneficiary, the necessity for any repair, alteration, replacement, clean-up or maintenance, Grantor shall, at the discretion of Beneficiary, either: (i) cause such work to be effected promptly; or (ii) promptly establish an interest bearing reserve fund with Beneficiary in an amount determined by Beneficiary for the purpose of effecting such work.

2.10. **Compliance with Applicable Laws.** Grantor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws (as defined below) and the Americans with Disabilities Act of 1990 (collectively, the "**Legal Requirements**"), now or hereafter affecting all or any part of the Property, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Grantor represents and warrants that, to Grantor's knowledge, the Property currently is in compliance with all Legal Requirements applicable to the Property.

2.11. **Damage, Destruction and Condemnation.** (a) If all or any part of the Property shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Property shall be taken or condemned by a competent authority for any public or quasi-public use or purpose,

there shall be no abatement or reduction in the amounts payable by Grantor under the Loan Documents and Grantor shall continue to be obligated to make such payments.

(b) If all or any part of any Improvements at the Property are partially or totally damaged or destroyed, Grantor shall give prompt notice thereof to Beneficiary, and Beneficiary may make proof of loss if not made promptly by Grantor. Grantor hereby authorizes and directs any affected insurance company to make payment under such insurance, for claims in excess of \$10,000, including return of unearned premiums, to Beneficiary instead of to Grantor and Beneficiary jointly, and Grantor appoints Beneficiary as Grantor's attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and irrevocable. Upon prior written notice to Grantor, Beneficiary is hereby authorized and empowered by Grantor to settle, adjust or compromise, in consultation with Grantor, any claims for loss, damage or destruction to the Property. Grantor shall pay all reasonable costs of collection of insurance proceeds payable on account of such damage or destruction. Grantor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Beneficiary as security for payment of the Liabilities. Beneficiary shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds to: (i) reduction of the Liabilities, without any prepayment fee or other penalty other than standard Libor breakage fees; (ii) restoration, replacement or repair of the Property in accordance with Beneficiary's standard construction loan disbursement conditions and requirements; and/or (iii) Grantor.

(c) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Property entered into on or after the date hereof, Grantor shall give notice to Beneficiary. Grantor shall, at its sole cost and expense, diligently prosecute any such proceeding and shall consult with Beneficiary, its attorneys and experts, and shall cooperate with it in the defense of any such proceeding. Beneficiary may participate in any such proceeding and Grantor shall from time to time deliver to Beneficiary all instruments requested by it to permit such participation. Grantor shall not, without Beneficiary's prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Property unless required by law, or (ii) to compromise, settle or adjust any such proceeding. All awards and proceeds of condemnation of all or any part of the Property are hereby assigned to Beneficiary, and Grantor, upon request by Beneficiary, agrees to make, execute and deliver any additional assignments or documents necessary from time to time to enable Beneficiary to collect the same. Such awards and proceeds shall be paid or applied by Beneficiary, in its sole discretion, to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Property in accordance with Beneficiary's standard construction loan disbursement conditions and requirements; and/or (iii) Grantor.

(d) Nothing herein shall relieve Grantor of its duty to repair, restore, rebuild or replace the Property following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement.

(e) Notwithstanding the provisions of subparagraphs (b) and (c) above, in the event that all or any part of the Improvements at the Property are damaged by fire or other casualty, and Grantor promptly notifies Beneficiary of its desire to repair and restore the same, then provided that the following terms and conditions are and remain fully satisfied by Grantor, Beneficiary shall disburse insurance proceeds for repair and restoration of the Property against completed work in accordance with Beneficiary's standard construction loan disbursement conditions and requirements

(which may be contained in an agreement which Beneficiary may require Grantor to sign); otherwise, and to the extent of any excess proceeds, Beneficiary shall have the right to apply the proceeds toward reduction of the Liabilities:

(i) no Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Loan Documents shall have occurred;

(ii) the estimated cost for the repair and restoration of the Property shall not exceed forty-five percent (45%) of the market value of the Improvements prior to the casualty, as determined by Beneficiary's construction inspector;

(iii) Grantor shall have delivered evidence satisfactory to Beneficiary that the Property can be fully repaired and restored at least six (6) months prior to the maturity of the Note;

(iv) All parties having existing or expected possessory interests in the Property (pursuant to any Lease) agree in a manner reasonably satisfactory to Beneficiary that they will continue or extend their intent and arrangements for the Lease term then in effect following the work;

(v) the work is performed under a stipulated sum or guaranteed maximum price contract reasonably satisfactory to Beneficiary in accordance with plans and specifications and a budget reasonably satisfactory to Beneficiary and in compliance with all Legal Requirements;

(vi) Grantor shall have deposited with Beneficiary for disbursement in connection with the restoration the greater of: (1) the applicable deductible under the insurance policies covering the loss; or (2) the amount by which the cost of restoration of the Property to substantially the same value, condition and character as existed prior to such damage is reasonably estimated by Beneficiary to exceed the net insurance proceeds available for restoration; and

(vii) Grantor has paid as and when due all of Beneficiary's costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and reasonable legal fees. If not paid on demand, and at Beneficiary's option, such costs may be deducted from the disbursements made by Beneficiary or added to the sums secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

2.12. **Required Notices.** Grantor shall notify Beneficiary in writing within five (5) business days of: (a) receipt of any notice from any governmental or quasi-governmental authority relating to the structure, use or occupancy of the Property or alleging a violation of any Legal Requirement; (b) a substantial change in the occupancy or use of all or any part of the Property; (c) receipt of any notice from the holder of any lien or security interest in all or any part of the Property; (d) commencement of any litigation materially and adversely affecting or potentially affecting the financial ability of Grantor or the value of the Property; (e) a pending or threatened condemnation of all or any part of the Property; (f) a fire or other casualty causing material damage to all or any part of the Property; (g) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Property or Grantor's interest therein to the extent that such matter violates Environmental Law; (h) receipt of any request for information,

demand letter or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Property or at any other site owned or operated by Grantor; (i) receipt of any notice from any tenant of all or any part of the Property alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (j) receipt of any notice of the imposition of, or the execution on, any lien on or security interest in all or any part of the Property.

2.13. **Books and Records; Inspection.** Grantor shall keep and maintain (a) complete and accurate books and records with respect to the operation of the Property on a federal income-tax basis of accounting, reflecting all items of income and expense, and (b) copies of all written contracts, leases and other agreements affecting the Property. Beneficiary or its designated representatives shall, upon reasonable prior notice to Grantor, have (a) the right of entry and free access to the Property during business hours (which may be without notice in any case of emergency) to inspect the Property, and (b) the right to examine and audit all books, contracts and records of Grantor relating to the Property.

2.14. **Right to Reappraise.** Upon an Event of Default, if Grantor delivers notice to Beneficiary of its intention to exercise the Maturity Date extension option (pursuant to Section 2 of the Note), or if Beneficiary has reasonable cause to believe that there is a material reduction in market value as compared to the market value set forth in the appraisal delivered to Beneficiary in connection with the closing of this Loan, Beneficiary shall have the right to conduct or have conducted by an independent appraiser acceptable to Beneficiary appraisals of the Property in form and substance satisfactory to Beneficiary, the sole cost and expense of which shall be paid on demand by Grantor; **provided, however,** that Grantor shall not be obligated to bear the expense of more than one such appraisal in any calendar year so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Beneficiary. The cost of such appraisals, if chargeable to Grantor as aforesaid, shall be added to the Liabilities and shall be secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

3. **SECURITY AGREEMENT.** This Deed of Trust constitutes a security agreement under the Code and shall be deemed to constitute a fixture financing statement. With respect to said fixture filing, (a) debtor is Grantor, (b) the secured party is Beneficiary, and (c) the respective mailing addresses of Grantor (debtor) and Beneficiary (secured party) are set forth in the opening paragraph. Grantor hereby grants to Beneficiary a security interest in the personal and other property (other than real property) included in the Property, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof. Grantor shall, at Grantor's own expense, execute, deliver, file and refile any financing or continuation statements or other security agreements Beneficiary may require from time to time to perfect, confirm or maintain the lien of this Deed of Trust with respect to such property. A photocopy of an executed financing statement shall be effective as an original. Without limiting the foregoing, Grantor hereby irrevocably appoints Beneficiary attorney-in-fact for Grantor to execute, deliver and file such instruments for or on behalf of Grantor at Grantor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable, provided that written notice thereof is given to Grantor. It is intended by Grantor and Beneficiary that this Deed of Trust be effective as a financing statement filed with the applicable real estate records as a fixture filing under Section 334 of the Code (Utah Code Annotated § 70A-9a-334) covering the Property. A description of the Real Estate which relates to the personal fixture is set forth in Exhibit "A".

#### **4. ASSIGNMENT OF LEASES.**

4.1. Grantor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Beneficiary all of Grantor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Grantor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Grantor shall receive and hold such Rents in trust as a fund to be applied, and Grantor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property and the payment of interest, principal and other sums becoming due under the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Grantor shall automatically, without notice or any other action by Beneficiary, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Grantor shall be held in trust by Grantor for the sole and exclusive benefit of Beneficiary. Nothing contained in this Section 4.1, and no collection by Beneficiary of Rents, shall be construed as imposing on Beneficiary any of the obligations of the lessor under the Leases. Grantor hereby acknowledges that Trustee and Beneficiary's rights hereunder are not contingent upon, and may be exercised without, possession of the Property.

4.2. Grantor shall timely perform all of its obligations under the Leases. Grantor represents and warrants that: (a) Grantor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; (b) no other assignment of any interest in any of the Leases or Rents has been made; (c) there are no leases or agreements to lease all or any portion of the Property now in effect except the Leases, true and complete copies of which have been furnished to Beneficiary, and no written or oral modifications have been made thereto; (d) there is no existing default by Grantor or by any tenant under any of the Leases, nor has any event occurred which due to the passage of time, the giving or failure to give notice, or both, would constitute a default under any of the Leases and, to the best of Grantor's knowledge, no tenant has any defenses, set-offs or counterclaims against Grantor; (e) the Leases are in full force and effect; and (f) Grantor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised.

4.3. Grantor shall not, without the prior written consent of Beneficiary: (a) enter into any lease of all or any portion of the Property; (b) amend, modify, terminate or accept a surrender of any Lease, except that Grantor shall have the right to terminate that certain Agreement with Diamond Parking Services LLC dated February 21, 2024 in accordance with the provisions thereof without Beneficiary's consent; or (c) collect or accept rent from any tenant of the Property for a period of more than one month in advance. Any of the foregoing acts, if done without the prior written consent of Beneficiary in each instance, shall be null and void.

**5. DECLARATION OF NO OFFSET.** Grantor represents to Beneficiary that Grantor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Grantor shall, within five (5) days upon request in person or within seven (7) days upon request by mail, furnish to Beneficiary or Beneficiary's designee a written statement in form satisfactory to Beneficiary stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

## 6. ENVIRONMENTAL MATTERS.

6.1. **Definitions.** As used herein, “**Environmental Laws**” shall mean all existing or future federal, state and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene and the protection of health and the environment including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances (as hereinafter defined); (b) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property; and (c) those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. Any terms mentioned herein which are defined in any Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

6.2. **Representations, Warranties and Covenants.** Grantor represents, warrants, covenants and agrees as follows:

(a) To the best of Grantor’s knowledge and except as otherwise set forth in Phase I Environmental Site Assessment prepared by Nova Group, GBC and dated November 12, 2024 (the “**Environmental Report**”), to Grantor’s knowledge, neither Grantor nor the Property or any occupant thereof is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any violation of Environmental Law. Grantor shall not cause or permit the Property to be in violation of, or do anything which would subject the Property to any remedial obligations under, any Environmental Law, and shall promptly notify Beneficiary in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any violation of Environmental Law. In addition, Grantor shall provide Beneficiary with copies of any and all material written communications with any governmental authority in connection with any violation of Environmental Law, concurrently with Grantor's giving or receiving of same.

(b) To the best of Grantor's knowledge and except as set forth in the Environmental Report, there has been no release, spill, discharge, leak, disposal or emission (individually a “**Release**” and collectively, “**Releases**”) of any Hazardous Material, Hazardous Substance or Hazardous Waste, including gasoline, petroleum products, explosives, toxic substances, solid wastes and radioactive materials (collectively, “**Hazardous Substances**”) at, upon, under or within the Property in violation of any Environmental Law which has not been corrected or remedied. To the best of Grantor's knowledge and except as set forth in the Environmental Report, the use which Grantor or any other occupant of the Property makes or intends to make of the Property will not result in Release of any Hazardous Substances on or to the Property. During the term of this Deed of Trust, if Grantor finds a Release has occurred, Grantor shall remove or remediate or cause to be removed or remediated the same promptly upon discovery at its sole cost and expense.

(c) To the best of Grantor's knowledge and except as set forth in the Environmental Report, the Property is not currently being used by the present owners and/or operators nor will it be used in the future to refine, produce, store, handle, transfer, process, transport, generate, manufacture, heat, treat, recycle or dispose of Hazardous Substances.

(d) To the best of Grantor's knowledge and except as set forth in the Environmental Report, the Property: (i) is being and has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all respects; and (ii) does not have any Hazardous Substances present excepting small quantities of petroleum and chemical products, in proper storage containers, that are necessary or customary for the construction or operation of the commercial business of Grantor and its tenants and the usual waste products therefrom ("**Permitted Substances**").

(e) Grantor will and will use its best efforts to cause its tenants to operate the Property in compliance with all Environmental Laws and, other than Permitted Substances, will not place and shall use its best efforts to not permit to be placed any Hazardous Substances on the Property.

(f) To the best of Grantor's knowledge and except as set forth in the Environmental Report, no lien has been attached to or threatened to be imposed upon the Property, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. To the best of Grantor's knowledge and except as set forth in the Environmental Report, neither Grantor nor any other person during Grantor's ownership of the Property has been involved in operations at the Property which could lead to the imposition of environmental liability on Grantor, or on any subsequent or former owner of the Property, or the creation of an environmental lien on the Property. In the event that any such lien is filed, Grantor shall, within (30) days from the date that the Grantor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Property sold), either: (i) pay the claim and remove the lien from the Property; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Beneficiary in an amount sufficient to discharge the claim out of which the lien arises.

6.3. **Right to Inspect and Cure.** Beneficiary shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as Beneficiary shall deem necessary or advisable from time to time subject to the rights of tenants and lawful occupants the reasonable cost and expense of which shall be paid on demand by Grantor; **provided, however,** that Grantor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (a) no Event of Default exists, and (b) Beneficiary has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Property or that Grantor or the Property is in violation of any Environmental Law. The cost of such inspections, audits and tests, if chargeable to Grantor as aforesaid, shall be added to the Liabilities and shall be secured by this Deed of Trust. Grantor shall, and shall use its best efforts to cause each tenant of the Property to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Property. In the event that Grantor fails to comply with any Environmental Law, Beneficiary may, in addition to any of its other remedies under this Deed of Trust, cause the Property to be in compliance with such laws and the cost of such compliance shall be added to the sums secured by this Deed of Trust in accordance with the provisions of Section 1 hereof.

7. **EVENTS OF DEFAULT.** Each of the following shall constitute a default (each, an "Event of Default") hereunder:

7.1. Non-payment within five (5) days of the date when due of any principal and/or interest payment required under the Note;

7.2. Non-payment within ten (10) days of the date of written notice to Grantor indicating same is due of any sum required to be paid to Beneficiary pursuant to the terms of this Deed of Trust;

7.3. A breach by Grantor of any other term, covenant, condition, obligation or agreement under this Deed of Trust, and the continuance of such breach for a period of fifteen (15) days after written notice thereof shall have been given to Grantor; provided, however, that if such breach is curable but cannot reasonably be cured within such fifteen (15) day period, and Grantor shall have commenced to cure such breach within such fifteen (15) day period and thereafter diligently and expeditiously proceeds to cure the same, then, such fifteen (15) day period shall be extended for so long as it shall require Grantor in the exercise of due diligence to cure such breach, it being agreed that no such extension shall be for a period in excess of forty-five (45) days;

7.4. An Event of Default under any of the other Loan Documents;

7.5. Any representation or warranty made by Grantor in this Deed of Trust shall prove to be false, incorrect or misleading in any material respect as of the date when made, and the continuance of such breach for a period of fifteen (15) days after written notice thereof shall have been given to Grantor;

7.6. The filing by or against Grantor or any Guarantor of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Grantor or any Guarantor; the appointment of a custodian, receiver, liquidator or trustee for Grantor or any Guarantor or for any of the property of Grantor or such Guarantor, or any action by Grantor or any Guarantor to effect any of the foregoing; or if Grantor or any Guarantor becomes insolvent (however defined) or is not paying its debts generally as they become due, provided that any involuntary action not consented to by Grantor or any Guarantor (as applicable) is not an Event of Default hereunder if same was discharged or dismissed within ninety (90) days of filing, appointment or insolvency;

7.7. The dissolution, liquidation, merger, consolidation or reorganization of Grantor or the institution of any proceeding to effect any of the foregoing, except for Permitted Transfers, and the continuance of such breach for a period of fifteen (15) days after written notice thereof shall have been given to Grantor;

7.8. The death of Richard Birdoff unless within forty five (45) days of such death, (i) Beneficiary is provided with a substitute guarantor acceptable to Beneficiary in its sole and absolute discretion; and (ii) such substitute guarantor assumes in writing the obligations of the deceased Guarantor pursuant to the Loan Documents, including without limitation, the Guaranty Agreement executed of even date herewith by Guarantor in favor of Beneficiary;

7.9. A default that continues beyond any applicable notice and/or cure period under any other obligation by Grantor or any Guarantor in favor of Beneficiary, including obligations arising under swap agreements (as defined in 11 U.S.C. §101), or under any document securing or evidencing such obligation, whether or not such obligation is secured by the Property which is not cured within thirty (30) days of Grantor's or such Guarantor's receipt of written notice thereof;



7.10. The filing, entry or issuance of any judgment, execution, garnishment, attachment, distraint or lien against Grantor or any Guarantor or their property and the continuance of same for a period of thirty (30) days after Grantor first becomes aware that it is filed or entered; or

7.11. A default under any other obligation secured by the Property or any part thereof, which default continues beyond any applicable notice and/or cure period provided with respect to such obligation.

**8. REMEDIES.** If an Event of Default shall have occurred, Beneficiary may take any of the following actions:

8.1. **Acceleration.** Beneficiary may declare the entire amount of the Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Beneficiary may charge and collect interest from the date of default on the unpaid balance of the Liabilities, at the Default Rate set forth in the Note.

8.2. **Possession.** To the extent permitted under applicable law, Beneficiary may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Beneficiary, in Beneficiary's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Liabilities. Beneficiary is given full authority to do any act which Grantor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Deed of Trust and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence and during the continuance of an Event of Default, Grantor shall pay monthly in advance to Beneficiary or to any receiver appointed to collect said rents the fair and reasonable rental value for Grantor's use and occupation of the Property, and upon default in any such payment Grantor shall, within three (3) days of receipt of written notice thereof, vacate and surrender the possession of the Property to Beneficiary or to such receiver. If Grantor does not vacate and surrender the Property then Grantor may be evicted by summary proceedings.

8.3. **Trustee's Sale.** Trustee, or the agent or successor of Trustee, at the request of Beneficiary, shall sell or offer for sale the Property in such portions, order and parcels as Beneficiary may determine with or without having first taken possession of same, to the highest bidder for cash at one or more public auctions in accordance with the terms and provisions of the law of the State of Utah and Section 10.11(b) of this Deed of Trust.

8.4. **Judicial Foreclosure.** Beneficiary may institute any one or more actions of foreclosure against all or any part of the Property, or take such other action at law, equity or by contract for the enforcement of this Deed of Trust and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Liabilities. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate. Without limiting the foregoing, Beneficiary may foreclose this Deed of Trust and exercise its rights as a secured party for

all or any portion of the Liabilities which are then due and payable, subject to the continuing lien of this Deed of Trust for the balance not then due and payable. In case of any sale of the Property by judicial proceedings, the Property may be sold in one parcel or in such parcels, manner or order as Beneficiary in its sole discretion may elect. Grantor, for itself and anyone claiming by, through or under it, hereby agrees that Beneficiary shall in no manner, in law or in equity, be limited, except as herein provided, in the exercise of its rights in the Property or in any other security hereunder or otherwise appertaining to the Liabilities or any other obligation secured by this Deed of Trust, whether by any statute, rule or precedent which may otherwise require said security to be marshalled in any manner and Grantor, for itself and others as aforesaid, hereby expressly waives and releases any right to or benefit thereof. The failure to make any tenant a defendant to a foreclosure proceeding shall not be asserted by Grantor as a defense in any proceeding instituted by Beneficiary to collect the Liabilities or any deficiency remaining unpaid after the foreclosure sale of the Property.

8.5. **Bidding by Beneficiary Permitted.** Upon any foreclosure sale or sales of all or any portion of said premises under the power herein granted, Beneficiary may bid for and purchase the Property and shall be entitled to apply all or any part of the debt as a credit to the purchase price.

8.6. **Appointment of Receiver.** Beneficiary may petition a court of competent jurisdiction to appoint a receiver, trustee, liquidator or conservator of the Property, without regard for the adequacy of the security for the Debt and without regard for the solvency of Grantor, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Debt. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and operate the Property (including leases existing beyond the term of receivership), plant, cultivate and harvest crops thereon, and otherwise use and utilize the property, and to have such other duties as may be fixed by the court. Grantor specifically agrees that the court may appoint a receiver without reference to the adequacy or inadequacy of the security, or the solvency or insolvency of Grantor or any guarantor, and without reference to other matters normally taken into account by courts in the discretionary appointment of receivers, it being the intention of Grantor to hereby authorize the appointment of a receiver when Grantor is in default and Beneficiary has requested the appointment of a receiver. Grantor hereby agrees and consents to the appointment of the particular person or firm (including an officer or employee of Beneficiary) designated by Beneficiary as receiver and hereby waives its right to suggest or nominate any person or firm as receiver in opposition to that designated by Beneficiary.

8.7. **Rights as a Secured Party.** Beneficiary shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Code. Beneficiary may elect to foreclose such of the Property as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Grantor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

8.8. **Excess Monies.** Beneficiary may apply on account of the Liabilities any unexpended monies still retained by Beneficiary that were paid by Grantor to Beneficiary: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Grantor.

8.9. **Other Remedies.** Beneficiary shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Grantor under the terms of this Deed

of Trust, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure, or any other action, for any default by Grantor existing at the time the earlier action was commenced. In addition, Beneficiary shall have the right to set-off all or any part of any amount due by Grantor to Beneficiary under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Beneficiary in any capacity to Grantor, including any obligation to disburse to Grantor any funds or other property on deposit with or otherwise in the possession, control or custody of Beneficiary.

## **9. TRUSTEE PROVISIONS.**

9.1. **Irrevocable Trust.** The Trust created hereby is irrevocable by Grantor. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law but acceptance is not required as a condition to the validity hereof and this Deed of Trust is effective upon delivery. Trustee shall not be obligated to notify any party hereto of pending sale under any other deed of trust, or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party, except as required by law.

9.2. **Trustee's Duties.** Upon payment in full of all sums secured hereby and performance of all obligations of Grantor hereunder, the lien of this Deed of Trust upon the Property shall be released. At any time, without liability therefor and without notice, and without affecting the personal liability of Grantor or any other person for payment of the indebtedness secured hereby, Trustee may, with the consent of Beneficiary: (a) release any part of the Property from the lien hereof; (b) consent to the making and recording of any maps or plats of the Property; (c) join in granting any easement on the Property; or (d) join in any extension agreement or any agreement subordinating or modifying the lien or charge hereof. If Trustee shall perform any such acts or execute complete or partial releases it shall be paid a fee by Grantor in accordance with its established fees and charges therefor.

9.3. **Substitution of Trustee.** Beneficiary may substitute another Trustee in the place of the Trustee herein named to exercise the rights, powers and duties granted by law and contained herein. Upon such appointment, and without the necessity of a conveyance to the successor Trustee, the latter shall be vested with all the title, powers and duties conferred upon Trustee herein named.

9.4. **Trustee's Fees.** Trustee shall be paid reasonable fees and charges for all acts performed by it hereunder or in connection herewith. All such fees and charges shall be paid by Grantor and if Beneficiary shall advance any such fees or charges, Grantor shall reimburse same on demand, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of the demand, but in no event in excess of the maximum rate permitted by law. Payment thereof is secured by this Deed of Trust.

## **10. MISCELLANEOUS.**

10.1. **Notices.** All notices and communications under this Deed of Trust shall be in writing and shall be given by either (a) hand-delivery, (b) United States certified mail (postage prepaid, return receipt requested), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Deed of Trust. Notice shall be deemed to have been given and received on the date when delivered or refused. Notwithstanding the foregoing, if a notice or other communication is delivered on a non-business day or after 5 p.m. on a business day, then same shall be deemed delivered on the next following business day. A party may change its address by giving written notice to the other

party as specified herein. Notices and communications under this Deed of Trust may be given by counsel for either party (on behalf of such party) and a copy of any notice from Beneficiary to Grantor with respect to any default under this Deed of Trust or any event which, due to the passage of time, would constitute a default under this Deed of Trust shall be sent to c/o RD Management LLC, 810 Seventh Avenue, 10<sup>th</sup> Floor, New York, New York 10019, Attention: Legal Department

10.2. **Remedies Cumulative.** The rights and remedies of Beneficiary as provided in this Deed of Trust or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Beneficiary at law or in equity. The failure, at any one or more times, of Beneficiary to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not be construed as a waiver thereof.

10.3. **No Implied Waiver.** Beneficiary shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Beneficiary, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

10.4. **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Deed of Trust shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

10.5. **Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Deed of Trust shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Deed of Trust cannot be assigned by Grantor without the prior written consent of Beneficiary, and any such assignment or attempted assignment by Grantor shall be void and of no effect with respect to Beneficiary.

10.6. **Modifications.** This Deed of Trust may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

10.7. **Commercial Loan.** Grantor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Deed of Trust were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

10.8. **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the substantive laws of the State of Utah without reference to conflict of laws principles.

10.9. **Joint and Several Liability.** If Grantor consists of more than one person or entity, the word "Grantor" shall mean each of them and their liability shall be joint and several.

10.10. **Non-Merger.** In the event Beneficiary shall acquire title to the Property by conveyance from Grantor or as a result of foreclosure, this Deed of Trust shall not merge in the fee estate of the Property but shall remain and continue as an existing and enforceable lien for the Liabilities secured hereby until the same shall be released of record by Beneficiary in writing.

10.11. **Utah Provisions.** Notwithstanding anything to the contrary elsewhere in this Deed of Trust:

(a) The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Grantor which apply to this Deed of Trust and to the Property and such further rights and agreements are incorporated herein by this reference.

(b) Grantor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Grantor under *Utah Code Ann. § 78B-6-901* (formerly *Utah Code Ann. § 78-37-1*) and *Utah Code Ann. § 57-1-32* and any successor or replacement statute or any similar laws or benefits.

(c) In the event of any amendment to the provisions of *Utah Code Title 57* or other provisions of the Utah Code referenced in this Deed of Trust, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such amendments or Beneficiary may elect not to give effect to such demand amendments hereto if permitted by Applicable Law.

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

(e) **Reinstatement.** If Grantor, Grantor's successor in interest or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Deed of Trust and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Ann. § 57-1-31(1)*, such party shall pay to Beneficiary the reasonable cancellation fee contemplated by *Utah Code Ann. § 57-1-31(2)*, as determined by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

(f) **Acceptance By Trustee.** In no event shall Grantor be required to pay to Trustee any fees or compensation in excess of amounts permitted by *Utah Code Ann. § 57-1-21.5*.

(g) **Exercise of Trustee's Power of Sale.**

(1) Should Beneficiary elect to have Trustee exercise the power of sale herein contained, Beneficiary shall deliver to Trustee a written declaration of default and demand for sale in accordance with applicable law;

(2) In accordance with applicable law, Trustee shall cause to be recorded, published and/or delivered to Grantor such notice of default and election to sell as may then be

required by law and by this Deed of Trust. After giving notice of default and notice of sale, and the lapse of such time period as may be required by law, Trustee may, without demand on Grantor, at the time and place of sale fixed in the notice of sale, either as a whole or in separate parcels or items or through two (2) or more successive sales, sell the Property or any part thereof at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Grantor shall have no right to direct the order in which the Property is sold and Grantor hereby waives any and all rights under Utah Code Annotated § 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold. Beneficiary may, in its sole discretion, designate the order in which the Property shall be offered for sale or sold and determine if the Property shall be sold in a single sale or in two (2) or more successive sales or in any other manner Beneficiary deems to be in its best interests. If Beneficiary determines that the Property shall be sold in two (2) or more sales, Beneficiary may, at its option, cause such sales to be conducted simultaneously or successively on the same day or on different days and times and in such order as Beneficiary shall determine, and no such sale shall extinguish or otherwise affect the lien of this Deed of Trust on any part of the Property not then sold until all indebtedness secured hereby has been fully paid. Grantor shall pay the costs and expenses of each such sale and any judicial proceeding in which any such sale may be made. Trustee shall deliver to such purchaser its deed conveying the portion of the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may purchase at such sale;

(3) After deducting all costs, fees and expenses of Trustee and of the sale, including costs of evidence of title in connection with the sale, Trustee shall apply the proceeds of sale first to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the Default Rate, next to all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto or the Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with Utah Code Annotated § 57-1-29;

(4) For purposes of Utah Code Annotated § 57-1-28, Grantor agrees that all default interest, late charges, any prepayment premium, and similar amounts, if any, owing from time to time under the Loan shall constitute a part of and be entitled to the benefits of Beneficiary's Deed of Trust lien upon the Property, and Beneficiary may add all default interest, late charges, any prepayment premium, and similar amounts owing from time to time under the Loan to the principal balance of the Loan, and in either case Beneficiary may include the amount of all unpaid late charges in any credit bid Beneficiary may make at a foreclosure sale of the Property pursuant to this Deed of Trust;

(5) In accordance with applicable law, Trustee may postpone the sale of all or any portion of the Property by public announcement at the time and place first fixed for sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale; and

(6) Upon any sale pursuant to this Section, Grantor shall be completely and irrevocably divested, to the maximum extent permitted by law, of all its right, title, interest, claims and demands at law or in equity in and to the Property sold or any part thereof, and such sale shall be

a perpetual bar both at law and in equity against Grantor and any and all other persons claiming any such right, title, interest, claims or demands by, through or under Grantor.

(h) Full Reconveyance by Trustee. Upon written request of Beneficiary and upon payment by Grantor of Trustee's fees for all services involved in the preparation, execution and recordation of the reconveyance, Trustee shall reconvey the Property or portions thereof then held hereunder, in whole or in part, as designated by Beneficiary and in such portions as designated by Beneficiary to Grantor, to the person or persons legally entitled thereto, without recourse or warranty.

(i) Payment of Advances. To the extent this Loan involves one or more advances which Trustor may draw and repay fund, then, at any time prior to the maturity of the Note, the Note shall have a zero balance owing, this Deed of Trust shall not be deemed satisfied or terminated but shall remain in full force and effect for future draws unless terminated upon other grounds.

In the event of any inconsistencies between the terms and conditions of this Section 10.11 and the terms and condition of this Deed of Trust, the terms and conditions of this Section 10.11 shall control and be binding.

**10.12. Waiver of Jury Trial. GRANTOR AND BENEFICIARY AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BENEFICIARY OR GRANTOR ON OR WITH RESPECT TO THIS DEED OF TRUST OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BENEFICIARY AND GRANTOR EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY, AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, GRANTOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. GRANTOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS DEED OF TRUST AND THAT BENEFICIARY WOULD NOT EXTEND CREDIT TO GRANTOR IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS DEED OF TRUST.**

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor, intending to be legally bound, has duly executed and delivered this Deed of Trust and Security Agreement under Seal as of the day and year first above written.

WITNESS:

Michele Agnello  
Michele Agnello  
[Print Name]

Michele Agnello  
Michele Agnello  
[Print Name]

GRANTOR:

**RB SALT LAKE LLC,**  
a Utah limited liability company

By: [Signature] (SEA

Richard Birdoff, Manager

**MFJF SALT LAKE LLC,**  
a Utah limited liability company

By: [Signature]  
(SEAL)

Richard Birdoff, Manager

STATE OF NEW YORK     )  
  SS.:  
COUNTY OF NEW YORK    )

On the 28 day of December, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Richard Birdoff personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

[Signature]  
Notary Public

Commission Expires:

Donna J. Phillips-Starks  
Notary Public, State of New York  
01PH4919935  
Qualified in Kings County  
~~Certificate Filed in New York County~~  
Commission Expires Feb. 28, 2026



**Exhibit "A"**

**LEGAL DESCRIPTION**

Certain parcels of real property in the County of Salt Lake, State of Utah, described as follows:

PARCEL 1:

THE NORTH 160 FEET OF LOT 6, EXCEPT THE NORTH 90 FEET OF THE EAST 85 FEET THEREOF, AND THE NORTH 160 FEET OF THE EAST 77.5 FEET OF LOT 5, BLOCK 30, PLAT "B", SALT LAKE CITY SURVEY IN THE CITY AND COUNTY OF SALT LAKE, STATE OF UTAH.

LESS AND EXCEPTING FROM PARCEL 1 THAT PORTION OF SUBJECT PROPERTY CONVEYED TO UTAH TRANSIT AUTHORITY, A PUBLIC TRANSIT DISTRICT, BY THAT CERTAIN SPECIAL WARRANTY DEED RECORDED DECEMBER 21, 2001 AS ENTRY NO. 8099008 IN BOOK 8544 AT PAGE 6764 OF OFFICIAL RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT 6, BLOCK 30, PLAT "B", SALT LAKE CITY SURVEY, SAID POINT BEING SOUTH 89°58'06" WEST 130.45 FEET FROM THE NORTHEAST CORNER OF SAID LOT 6 AND RUNNING SOUTH 61°53'52" WEST 8.28 FEET; THENCE SOUTH 89°58'06" WEST 5.70 FEET; THENCE SOUTH 0°01'50" EAST 6.00 FEET; THENCE SOUTH 89°58'06" WEST 10.88 FEET; THENCE NORTH 0°01'50" WEST 6.00 FEET; THENCE SOUTH 89°58'06" WEST 75.14 FEET; THENCE NORTH 61°57'28" WEST 8.27 FEET TO THE NORTH LINE OF LOT 6; THENCE NORTH 89°58'06" EAST 106.32 FEET ALONG THE NORTH LINE OF SAID LOT 6 TO THE POINT OF BEGINNING.

BASIS OF BEARING IS THE SALT LAKE CITY MONUMENTS ON 400 SOUTH STREET AT 800 EAST STREET AND 900 EAST STREET.

PARCEL 2:

THE SOUTH 5 FEET OF LOT 6 AND THE SOUTH 5 FEET OF THE EAST 77.5 FEET OF LOT 5, BLOCK 30, PLAT "B", SALT LAKE CITY SURVEY IN THE CITY AND COUNTY OF SALT LAKE, STATE OF UTAH.

PARCEL 3:

BEGINNING AT THE NORTHEAST CORNER OF LOT 7, BLOCK 30, PLAT "B", SALT LAKE CITY SURVEY, AND RUNNING THENCE SOUTH 33 FEET; THENCE WEST 120.5 FEET; THENCE SOUTH 2 FEET; THENCE WEST 143 FEET; THENCE NORTH 45° WEST 49.5 FEET; THENCE EAST 298.5 FEET TO THE POINT OF BEGINNING.

PARCEL 4:

A RIGHT OF WAY FOR RETAINING WALL FOOTINGS OVER, ACROSS OR UNDER THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT 33 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 7, BLOCK 30, PLAT "B", SALT LAKE CITY SURVEY, AND RUNNING THENCE SOUTH 2 FEET; THENCE WEST 120.5 FEET; THENCE NORTH 2 FEET; THENCE EAST 120.5 FEET TO THE POINT OF BEGINNING.

PARCEL 5:

THE WEST 50 FEET OF THE EAST 127.5 FEET OF LOT 5, BLOCK 30, PLAT "B", SALT LAKE CITY SURVEY, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SALT LAKE COUNTY, STATE OF UTAH.

PARCEL 6 (PARKING LOT):

THE NORTH 90 FEET OF THE EAST 85 FEET OF LOT 6, BLOCK 30, PLAT "B", SALT LAKE CITY SURVEY IN THE CITY AND COUNTY OF SALT LAKE, STATE OF UTAH.

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