

Trust Deed Page 1 of 24
Gary Christensen Washington County Recorder
05/03/2022 03:11:35 PM Fee \$108.00 By OLD
REPUBLIC TITLE (COMMERCIAL)

When recorded, return to:

ALTABANK, Division of Glacier Bank
2174 West Grove Parkway, Suite 150
Pleasant Grove, Utah 84062
Attn: Caitlyn Hightower
File: 2262229MT

**CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING
AND ASSIGNMENT OF RENTS (BLACK RIDGE KD-DAI, LLC)**

This CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF RENTS (BLACK RIDGE KD-DAI, LLC) ("Deed of Trust") is made to be effective as of May 2, 2022, by BLACK RIDGE KD-DAI, LLC, a Utah limited liability company, whose mailing address is 14034 South 145 East, Suite 204, Draper, UT 84020 ("Grantor;" "Assignor" or "Borrower"), to Old Republic National Title Insurance Company, whose address is 299 South Main Street, Suite 120, Salt Lake City, UT 84111 (including any successor trustee, "Trustee"), for the benefit of ALTABANK, Division of Glacier Bank, whose mailing address is 2174 West Grove Parkway, Suite 150, Pleasant Grove, Utah 84062 ("Beneficiary;" "Assignee" or "Lender").

WITNESSETH:

**ARTICLE 1
GRANTING CLAUSE; WARRANTY OF TITLE**

1.1 Grantor irrevocably grants, bargains, sells, and conveys to Trustee, in trust, WITH POWER OF SALE, for the use and benefit of Beneficiary, all of Grantor's present and future estate, right, title and interest in that real property and all buildings and other improvements now thereon or later constructed ("Premises"), in the County of Washington, State of Utah, described on Exhibit A attached, together with the following which, with the Premises (unless the context otherwise requires), are collectively defined as "Collateral":

(a) All appurtenances to the Premises;

(b) All water and water rights, contracts with water districts, ditches and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, minerals, oil and gas rights, royalties, lease or leasehold interests owned by Grantor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;

(c) All right, title and interest of Grantor now owned or later acquired to streets, roads, alleys and public places, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;

(d) All machinery, equipment, fixtures and materials now or later attached to the Premises, including but not limited to all surface and subsurface irrigation and sprinkler system

equipment, together with all processing, manufacturing and service equipment and other personal property now or later located on or appurtenant to the Premises and used in connection with the management and operation thereof;

(e) Any licenses, contracts, permits and agreements required or used in the ownership, operation or maintenance of the Premises, including but not limited to any purchase and sale contracts, and the right to use any trademark, or service mark now or hereafter associated with operating any business conducted on the Premises;

(f) All insurance proceeds (other than insurance proceeds attributable to personal property owned by any tenant), and all awards, including interest, previously and hereafter made to Grantor for taking by eminent domain of the whole or any part of the Premises or any easements; and

(g) All other existing and future leases, subleases, licenses and other agreements for the use and occupancy of the Premises (collectively "Leases") and all income, receipts, revenues, rents, issues and profits arising from the use or enjoyment of the Premises (collectively "Rents").

1.2 Grantor warrants it has good and marketable title in fee simple to the Collateral, that it is the lawful owner of the Collateral, and that, except for those matters approved by Beneficiary and specifically described on Exhibit B attached ("Permitted Exceptions"), the title to all the Collateral is clear, free and unencumbered; Grantor and its successors and assigns shall forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims, subject to the Permitted Exceptions.

GRANTOR FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 2 OBLIGATION SECURED

This Deed of Trust is given to secure, in such order of priority as Beneficiary may elect:

2.1 Payment of the principal sum of up to \$37,150,000.00, which may include, without limitation, additional extension and other fees, late charges, prepayment premiums and attorneys' fees, according to the terms of that Promissory Note of even date made by Grantor payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof ("Note") and the Construction Loan Agreement of even date made by Borrower in favor of Lender, as may be amended from time to time ("Loan Agreement"). The principal, interest and other fees and charges shall be repaid as set forth in the Loan Agreement and Note, which terms and provisions are by this reference incorporated;

2.2 Payment, performance and observance by Grantor of each covenant, condition, provision and agreement of all monies expended or advanced by Beneficiary under the terms, or to preserve any right of Beneficiary, or to protect or preserve the Collateral or any part thereof;

2.3 Payment, performance and observance by Grantor of each covenant, condition, provision and agreement in the Loan Agreement and in any other document or instrument related to the indebtedness secured and of all monies expended or advanced by Beneficiary under the terms thereof or to preserve any right of Beneficiary; and

2.4 This Deed of Trust secures advances, including future advances (whether obligatory or optional), up to a total maximum principal amount of \$37,150,000.00, but this stated maximum principal amount will not otherwise be construed to limit the amount or scope of the Obligation. Such total maximum principal amount may include any sums or portions thereof included within the Obligation as designated by Beneficiary. This Deed of Trust shall also secure, to the same extent and with the same effect and priority, any additional amounts advanced, regardless of whether such additional amounts, when added to such maximum principal amount referenced above, exceed such maximum principal amount.

The indebtedness and obligations secured by this Deed of Trust are collectively defined as the "**Obligation**." Unless otherwise defined, all capitalized terms used shall have the meanings ascribed to them in the Loan Agreement.

ARTICLE 3 ASSIGNMENT OF LEASES AND RENTS

3.1 **Leasing.** Assignor shall not lease the Premises or any part thereof unless permitted under the Loan Agreement or by other written consent of Lender, and then only strictly in accordance with such agreement. Notwithstanding the foregoing, however, any and all Leases at the Premises, whether or not entered into with the consent of Lender, shall be subject to the provisions of this Article.

3.2 **Assignment.** Assignor irrevocably, presently, absolutely and unconditionally assigns and transfers to Lender: (a) the Rents, (b) all Leases, and (c) any and all guarantees of any obligations of any lessee under each of the Leases ("**Guarantees**"). The assignments in this Article are absolute assignments and irrevocable from Assignor to Lender and not merely the passing of security interests or assignments for security only.

3.3 **Grant of License.** Lender hereby confers upon Assignor a license ("**License**") to collect and retain the Rents as they become due and payable, and to administer the Leases, so long as no Event of Default shall exist and be continuing. If an Event of Default has occurred and is continuing, such License shall terminate without notice to or demand upon Assignor, without regard to the adequacy of Lender's security under this Deed of Trust.

3.4 **Collection and Application of Rents.** Subject to the License granted to Assignor under the Paragraph above, Lender has the right, power, and authority to collect any and all Rents, and administer the Leases. Assignor appoints Lender its attorney-in-fact, coupled with an interest, to, at such times as Lender may choose in its sole discretion: (a) demand, receive and enforce payment of any and all Rents; (b) give receipts, releases and satisfactions for any and all Rents; or (c) sue either in the name of Assignor and/or in the name of Lender for any and all Rents. Lender's right to the Rents does not depend on whether or not Lender takes possession of the Premises.

3.5 No Accounting to Grantor. Grantor waives any right to have Beneficiary account to Grantor for Rents collected or received by Lender. All rents received by Beneficiary shall first be used and applied by Lender in its discretion.

3.6 Enforcement of Leases. Assignor will (i) comply with and observe Assignor's obligations as landlord under all Leases and will do all that is necessary to preserve all Leases in force and free from any right of counterclaim, defense or set off, (ii) enforce the performance of each and every obligation, term, covenant, condition and agreement in the Leases by the tenants to be performed, (iii) notify Lender of the occurrence of any default under any Leases, and (iv) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties, or liabilities of Assignor or the tenants thereunder. Without Lender's written consent, Assignor will not collect or accept payment of any Rents from the Premises more than one (1) month prior to the due dates thereof; will not surrender or terminate any Lease except in accordance with its terms; and will not request or consent to the subordination of any Lease to any lien subordinate to this Deed of Trust.

3.7 Modification of Leases. Without the prior written consent of Lender, Assignor shall not: (i) waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge the tenant under any Leases from any obligations, covenants, conditions and agreements by tenant to be kept, observed and performed, including the obligation to pay the Rents thereunder in the manner and at the place and time specified therein; (ii) cancel, terminate, consent to or permit any surrender of any Leases except in accordance with the terms of the Lease; or (iii) renew or extend the term of the Leases for use for a lesser rental unless an option therefor was originally so reserved by the tenant of the Leases for a fixed and definite rental.

3.8 Lender Not Responsible. Under no circumstances shall Lender have any duty to collect Rents from the Premises. Regardless of whether or not Lender, in person or by agent, takes actual possession of the Premises, Lender is not and shall not be deemed to be: (a) a "mortgagee in possession" for any purpose; (b) responsible for performing any of the obligations of the lessor under any Lease; (c) responsible for any waste committed by Lessees or any other parties, any dangerous or defective condition of the Premises, or any negligence in the management, upkeep, defective condition, repair or control of the Premises; or (d) liable in any manner for the Premises or the use, occupancy, enjoyment or operation of all or any part of it, except for such matters as may arise from the willful misconduct and bad faith of Lender.

3.9 Assignor covenants and agrees that Assignor shall, at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the landlord or tenant thereunder, and shall pay all costs and expenses, including, without limitation, attorneys' fees, which Lender may incur in connection with Lender's appearance, voluntary or otherwise, in any such action or proceeding.

3.10 At any time, Lender may, at its option, if there is an Event of Default, notify any tenants or other parties of the existence of this Assignment. Assignor does hereby specifically authorize, instruct and direct each and every present and future tenant, landlord, lessee and licensee of the whole or any part of the Premises to pay all unpaid and future Rents to Lender upon receipt of demand from Lender to so pay the same and Assignor hereby agrees that each such present and

future tenant, landlord, lessee and licensee may rely upon such written demand from Lender to so pay said Rents without any inquiry into whether there exists an Event of Default or whether Lender is otherwise entitled to said Rents.

ARTICLE 4 **SECURITY AGREEMENT**

4.1 This Deed of Trust shall cover, and the Collateral shall include, all property now or hereafter affixed or attached to or incorporated upon the Premises, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Premises. To the extent any of the Collateral consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Grantor grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, to secure the Obligation. To the extent any of the Collateral or Personal Property, as hereinafter defined, may be or have been acquired with funds advanced by Beneficiary, this security interest is a purchase money security interest. In addition, to secure the Obligation, Grantor grants to Beneficiary, as secured party, a security interest in the property described below in, to, or under which Grantor now has or hereafter acquires any right, title or interest, whether present, future, or contingent: all equipment, inventory, accounts receivable, deposit accounts (including but not limited to operating accounts, reserve accounts and escrow accounts) and all cash and other funds and assets contained therein, general intangibles, instruments, documents, goods and chattel paper, as those terms are defined in the Uniform Commercial Code, and all other personal property of any kind (including without limitation money and rights to the payment of money), whether now existing or hereafter created, that are now or at any time hereafter (i) in the possession or control of Beneficiary in any capacity; (ii) erected upon, attached to, or appurtenant to, the Premises; (iii) located or used on the Premises or identified for use on the Premises (whether stored on the Premises or elsewhere); or (iv) used in connection with, arising from, related to, or associated with the Premises or any of the personal property described, the construction of any improvements on the Premises, the ownership, development, maintenance, leasing, management, or operation of the Premises, the use or enjoyment of the Premises, or operating any business conducted on the Premises; including without limitation all such property more particularly described:

(a) Buildings, structures and improvements, and building materials, fixtures and equipment to be incorporated into any buildings, structures or improvements;

(b) Goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, including without limitation, all such items used for (i) generation, storage or transmission of air, water, heat, steam, electricity, light, fuel, refrigeration or sound; (ii) ventilation, air-conditioning, heating, refrigeration, fire prevention and protection, sanitation, drainage, cleaning, transportation, communications, maintenance or recreation; (iii) removal of dust, refuse, garbage or snow; (iv) transmission, storage, processing or retrieval of information; (v) surface and subsurface irrigation and sprinkler system equipment; and (vi) floor, wall, ceiling and window coverings and decorations;

(c) Income, receipts, revenues, rents, issues and profits, including without limitation, room rents, minimum rents, additional rents, percentage rents, occupancy and user fees

and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, and cancellation premiums;

- (d) Claims for damages arising from the breach of any Leases or subleases;
- (e) Water and water rights, contracts with water districts, ditches and ditch rights, reservoirs and reservoir rights, stock or interest in irrigation or ditch companies, minerals, oil and gas rights, royalties, and lease or leasehold interests;
- (f) Plans and specifications prepared for constructing any improvements, including without limitation, all studies, estimates, data, and drawings;
- (g) Documents, instruments and agreements relating to, or connected with, the operation, control or development of the Premises, including without limitation, any declaration of covenants, conditions and restrictions and any articles of incorporation, bylaws and other membership documents of any property owners association or similar group;
- (h) All of Grantor's rights of every kind under or under any declaration of covenants, conditions and restrictions or similar documents or instruments, and any modifications thereof or supplements thereto (collectively, "Declaration"), and all of Grantor's rights under or under any other documents which may hereafter be executed or otherwise made effective regarding the Premises, including, without limitation, all development rights, special declarant rights, rights regarding any design or architectural review committees, and other rights of Grantor as declarant under the Declaration;
- (i) Claims and causes of action, legal and equitable, in any form whether arising in contract or in tort, and awards, payments and proceeds due or to become due, including without limitation those arising because of any loss of, damage to, taking of, or diminution in value of, all or any part of the Premises or any personal property described;
- (j) Sales agreements, escrow agreements, deposit receipts, and other documents and agreements for the sale or other disposition of all or any part of the Premises or any of the personal property described herein, and deposits, proceeds and benefits arising from the sale or other disposition of all or any part of the Premises or the personal property described;
- (k) Policies or certificates of insurance, contracts, agreements or rights of indemnification, guaranty or surety, and awards, loss payments, proceeds, and premium refunds that may be payable regarding such policies, certificates, contracts, franchise agreements, license agreements, agreements or rights, other than proceeds attributable to personal property owned by any tenant;
- (l) Contracts, agreements, permits, licenses, authorizations and certificates, including without limitation all architectural contracts, construction contracts, management contracts, service contracts, maintenance contracts, building permits and operating licenses;
- (m) Trade names, trademarks, and service marks (subject to any franchise or license agreements relating thereto);

(n) Refunds and deposits due or to become due from any utility companies or governmental agencies;

(o) Replacements and substitutions for, modifications of, and supplements, accessions, addenda and additions to, the personal property described; and

(p) Books, records, correspondence, files and electronic media, and all information, all additions to, substitutions for, the products of the above and all proceeds therefrom, in any form, whether cash proceeds or noncash proceeds, received when any such property (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily. Such proceeds shall include any of the foregoing specifically described property of Grantor acquired with cash proceeds. Together with, and without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Chattel Paper, Deposit Accounts, Letter-of-Credit Rights, Investment Property, Equipment and General Intangibles arising from or used in connection with the Collateral, as those terms are defined in the Uniform Commercial Code in effect in the state in which the Collateral is located. The personal property described or referred to in this Section 4.1 is defined as the "**Personal Property**." The security interests granted in this Section 4.1 are severally and collectively defined as "**Security Interest**."

4.2 The Security Interest shall be self-operative regarding the Personal Property, but Grantor shall execute and deliver on demand such additional security agreements, financing statements and other instruments as requested to impose the Security Interest upon the Personal Property. The Security Interest shall be prior to any other interests in the Personal Property except any lien or security interest granted in connection with any Permitted Exception. Grantor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Grantor, within ten (10) days of receipt of written demand, shall promptly pay all costs and expenses of filing and recording, including the costs of any searches, deemed necessary by Beneficiary to establish and determine the validity and the continuing priority of the Security Interest.

4.3 Grantor shall not sell, transfer, assign or otherwise dispose of any Personal Property or any interest therein without obtaining the prior written consent of Beneficiary which may be provided either specifically or generally. Unless Beneficiary then agrees otherwise in writing, all proceeds from any permitted sale or disposition over that required for replacements shall be paid to Beneficiary to be applied to the Obligation, whether or not then due. Grantor shall keep the Personal Property free of all security interests or other encumbrances, except the Security Interest and any security interests and encumbrances granted in connection with any Permitted Exception. Although proceeds of Personal Property are covered, this shall not be construed to mean that Beneficiary consents to any sale of the Personal Property.

4.4 Grantor shall keep and maintain the Personal Property in good condition and repair and shall promptly replace any part thereof that occasionally may become obsolete, badly worn or in a state of disrepair. All such replacements shall be free of any other security interest or encumbrance, except any security interest or encumbrance granted in connection with any Permitted Exception.

4.5 Except for purposes of replacement and repair, Grantor, without the prior written consent of Beneficiary, shall not remove, or permit the removal of, any Personal Property from the Premises.

4.6 Grantor warrants, covenants and agrees that: (i) the Personal Property is or will be used primarily for business (other than farm) purposes; (ii) the Personal Property will be kept at the Premises; and (iii) Grantor's records about the Personal Property will be kept at Grantor's above address. Grantor represents and warrants that (i) the name specified above for Grantor is the true and correct legal name of Grantor, and (ii) the address specified above is the principal place of business of Grantor. Grantor shall give Beneficiary immediate written notice of any change in the location of: (i) Grantor's principal place of business, is stated correctly above.; (ii) the Personal Property or any part thereof; or (iii) Grantor's records about the Personal Property. Grantor shall give Beneficiary immediate written notice of any change in the name of Grantor.

4.7 All covenants and warranties of Grantor in this Deed of Trust shall apply to the Personal Property whether referred to in this Article 4. The covenants and warranties of Grantor in this Article 4 are besides, and not in limitation of, those contained in the other provisions of this Deed of Trust.

4.8 Upon its recording or registration in the real estate records of the proper office, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. The filing of any other financing statement relating to any Personal Property, rights or interests described shall not be construed to diminish any right or priority.

4.9 This Deed of Trust is a "construction mortgage" as defined in the Uniform Commercial Code.

ARTICLE 5 PROTECTION AND PRESERVATION OF THE COLLATERAL

5.1 Grantor shall neither commit nor permit to occur any waste upon the Collateral but shall make or cause to be made all repairs, maintenance, renewals and replacements as may be necessary to maintain the Collateral in good condition and repair. For the sake of clarity, normal wear and tear shall not be considered "waste" as used in this Section 5.1. Grantor shall keep or cause to be kept any buildings on the Collateral free of termites, dry rot, fungus, beetles and all other harmful or destructive insects and shall keep all plants, trees and shrubs neatly pruned and in good condition. Grantor shall keep or cause to be kept the Collateral free of rubbish and other unsightly or unhealthful conditions. Grantor shall neither use nor permit the use of the Collateral in violation of any applicable statute, ordinance or regulation, including, without limitation, the Americans With Disabilities Act of 1990 and corresponding rules and regulations ("ADA"), or any policy of insurance insuring the Collateral.

5.2 Grantor will, for the benefit of Beneficiary, fully and promptly keep, observe, perform and satisfy in all material respects each obligation, condition, covenant, and restriction of Grantor affecting the Premises or imposed on it under any agreement between Grantor and a third party relating to the Collateral or the Obligations secured (collectively, "**Third Party Agreements**"), so there will be no default and so the Persons (other than Grantor) obligated

thereon shall be and remain at all times obligated to perform for the benefit of Beneficiary; and Grantor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance. Without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, conditioned or delayed, Grantor shall not (i) make or permit any termination or material amendment of the rights of Grantor under any Third Party Agreement; (ii) collect rents or the proceeds of the Collateral over 30 days before the same shall be due and payable; (iii) modify or amend any leases, or, except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased Premises; (iv) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any Leases and the Loan Documents, except to the extent permitted under the Loan Agreement; or (v) in any other manner impair Beneficiary's rights and interest with respect to the Rents. Grantor shall promptly deliver to Beneficiary copies of any demands or notices of default received by Grantor in connection with any Third-Party Agreement and allow Beneficiary the right, but not the obligation, to cure any such default. All security or other deposits received from tenants under any Leases shall be segregated and maintained in an account satisfactory to Beneficiary and in compliance with the law of the state where the Premises are located and with an institution satisfactory to Beneficiary.

5.3 Grantor shall promptly complete any improvements that may be commenced, in good and workmanlike manner and in conformance with plans and specifications approved by Beneficiary. Grantor shall repair and restore or cause to be repaired or restored, in conformance with the ADA, any portions of the Collateral that may be damaged or destroyed. Subject to Grantor's right to contest such liens as provided in the Loan Agreement, Grantor shall pay when due all claims for work performed and materials furnished on or in connection with the Collateral or any part thereof and shall pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's or materialman's charges, Liens, claims of Liens or encumbrances upon the Collateral. Grantor shall comply with all laws, ordinances and regulations now or hereafter enacted, including, without limitation, the ADA, affecting the Collateral or requiring any alterations or improvements to be made. Except as required by law, Grantor shall not remove, substantially alter, or demolish any building or improvement included in the Collateral without Beneficiary's prior written consent.

(a) Grantor shall provide and maintain policies of fire and extended coverage insurance as required by the Loan Agreement. Notwithstanding the above, upon the occurrence of an Event of Default, if Beneficiary shall thereafter so request, Grantor will immediately deposit with Beneficiary an amount equal to 100% of the amount which Beneficiary estimates will be required to make the next annual payments of the premium for the policies of insurance referred to in this Section, multiplied by the number of whole and partial months which have elapsed since the most recent policy anniversary date for each such policy. Thereafter, with each monthly payment under the Loan Agreement and Note, Grantor will deposit an amount equal to 1/12 of the amount which Beneficiary estimates will be required to pay the next required annual premium for each insurance policy referred to in this Section 5.3(a). These provisions provide Beneficiary with sufficient funds on hand to pay all such premiums 30 days before the date on which they become past due. Provided no Event of Default exists, Beneficiary will apply the amounts so deposited to the payment of such insurance premiums when due, but Beneficiary will not be liable for any interest on any amounts so deposited, and the money so received may be held and commingled with Beneficiary's own funds. Beneficiary shall have no responsibility to ensure the adequacy of

the amounts deposited if such amounts are inadequate to pay such insurance premiums, Grantors shall pay the shortfall.

(b) Grantor makes, constitutes and appoints Beneficiary (and all persons designated by Beneficiary) as Grantor's true and lawful agent and attorney-in-fact, with power to make, settle or adjust claims under such policies of insurance (provided, however, that if there shall not have occurred an Event of Default, Beneficiary shall consult with Grantor prior to finally making, settling or adjusting claims under such policies of insurance and will not settle such claims without Grantor's consent, which consent will not be unreasonably withheld, conditioned or delayed). The foregoing power of attorney is coupled with an interest and is therefore irrevocable. If payment because of any insurance losses shall be paid by check, draft or other instrument payable to Grantor, or to Grantor and Beneficiary jointly, Beneficiary may endorse the name of Grantor on such check, draft or other instrument, and may do such other things as Beneficiary may deem advisable to reduce the same to cash. Each insurance company is authorized and directed to pay for loss directly to Beneficiary, instead of to Grantor or to Grantor and Beneficiary jointly; Beneficiary may apply all or any part of such insurance proceeds to the payment of the Obligation, whether or not then due, or to the restoration or repair of the Collateral; provided, however, that Beneficiary shall apply the proceeds to the restoration or repair of the Collateral if these conditions are met within thirty (30) days following the insured loss: (i) there exists no Event of Default; (ii) Grantor presents sufficient evidence to Beneficiary that regarding any casualty loss, there are sufficient funds to restore or repair the Collateral damaged or destroyed by the casualty in accordance with the Plans and Specifications and the Budget; (iii) Grantor deposits with Beneficiary equity funds which, when combined with the insurance proceeds, are sufficient to completely restore or repair the damaged Collateral in accordance with the Plans and Specifications and the Budget; (iv) Grantor presents reasonable evidence to Beneficiary that, with respect to the Premises, (A) the Premises will obtain Completion by no later than the Completion Date, or (B) if Completion was already obtained when the damage or destruction occurred, the Premises will be repaired or restored to an architectural whole within the earlier of (1) six months following the damage or destruction, (2) six months prior to the Maturity Date, and (3) the expiration of the loss of rents or business interruption insurance coverage, and in each case of (A) and (B), Grantor has sufficient funds available to pay amounts due under the Loan Agreement and Note during such time; (v) the Beneficiary will incur no liability to any other person because of such use or release of proceeds; (vi) the Premises are not more than thirty (30)% damaged or destroyed by the casualty; (vii) Grantor delivers to Beneficiary evidence satisfactory to Beneficiary, in its reasonable discretion, that any leases relating to the Collateral cannot or will not be terminated because of the casualty; (viii) the insurance proceeds shall be held by Beneficiary and disbursed as repair, restoration, replacement or rebuilding progresses substantially under the procedures in this Deed of Trust for disbursement from a replacement reserve account; and (ix) any other conditions set forth in Section 6.8j of the Loan Agreement are satisfied. Beneficiary shall not be responsible for any insurance, for the collection of any insurance proceeds, or for the insolvency of any insurer. Application of insurance proceeds by Beneficiary shall not cure nor waive any Event of Default nor invalidate any act done because of any such Event of Default. Upon foreclosure of this Deed of Trust, or if Beneficiary or a receiver appointed by a court of competent jurisdiction shall take possession of the Collateral, then all right, title and interest of Grantor in all insurance policies then in force shall inure to the benefit of and pass to Beneficiary in possession, receiver or purchaser at such sale. Beneficiary is appointed attorney in fact for Grantor to assign and transfer such policies in the event of such a foreclosure or appointment.

(c) If the insurance proceeds are to be used for the restoration and repair of the Collateral, they shall be held by Beneficiary in a non-interest-bearing account selected by Beneficiary in its sole and absolute discretion ("Restoration Account"). Grantor, at its expense, shall promptly prepare and submit to Beneficiary all plans and specifications for the restoration and repair of the damaged Collateral, with evidence acceptable to Beneficiary setting forth the total expenditure needed for the restoration and repair based upon a fixed price contract with a reputable builder approved by Lender and covered by performance and labor and material payment bonds. The plans and specifications and all other aspects of the proposed restoration and repair shall be subject to Beneficiary's reasonable approval. If the insurance proceeds held in the Restoration Account cannot complete the restoration and repair, Grantor shall deposit in the Restoration Account an amount equal to the difference between the amount then held in the Restoration Account and the total contract price for the restoration and repair. Grantor may commence restoration and repair of the damaged Collateral only when authorized in writing by Beneficiary to do so and thereafter shall proceed diligently with the restoration and repair until completed. Disbursements shall be made from the Restoration Account for the restoration and repair under a disbursement schedule, and subject to other terms and conditions, acceptable to Beneficiary. Disbursements from the Restoration Account shall be charged first against funds deposited by Grantor and, after such funds are exhausted, against the insurance proceeds deposited. If the amounts held in the Restoration Account exceed the cost of the restoration and repair of the damaged Collateral, the excess funds shall be disbursed to Grantor for any amounts deposited by Grantor. Any funds remaining after such disbursement, at Beneficiary's option, may be applied by Beneficiary to the payment of the Obligation, whether or not then due, or may be disbursed to Grantor. All funds held in the Restoration Account are assigned to Beneficiary as further security for the Obligation. Beneficiary may apply all or any part of the funds held in the Restoration Account to curing any Event of Default.

5.4 Grantor shall pay or cause to be paid all taxes and assessments of every kind, nature and description levied or assessed on or against the Collateral before they become delinquent and shall deliver to Beneficiary, within ten (10) days of a written request by Beneficiary, receipts showing payment of all such taxes and assessments and shall pay when due all dues and charges for water and water delivery, electricity, gas, sewers, waste removal, bills for repairs, and any other claims, encumbrances and expenses incident to the ownership of the Collateral.

5.5 Subject to the Loan Agreement, Beneficiary may contest, by appropriate legal proceedings, the validity of any valuation for real or personal property tax purposes or of any levy or assessment of any real or personal property taxes against the Collateral either in the name of Beneficiary or the name of Grantor or both. Grantor, upon written notice and request by Beneficiary, shall join in any such proceedings. Grantor shall cooperate with Beneficiary in any such proceeding and execute any documents or pleadings required for such purposes. Grantor shall provide Beneficiary with a copy of the notice of valuation within ten (10) days after receipt of a written request for same from Beneficiary. Grantor shall reimburse Beneficiary for all costs and legal fees and expenses incurred by Beneficiary in connection with any such proceedings Beneficiary elects to undertake, but such reimbursement shall not exceed the tax savings achieved for the period covered by the notice of valuation. To facilitate the right of Beneficiary to contest any real or personal property tax valuation, levy, or assessment Grantor does make, constitute and appoint Beneficiary, and its successors and assigns, Grantor's true and lawful attorney-in-fact, in Grantor's name, place and stead, or otherwise, to file any claim or proceeding or to take any action,

either in its own name, in that of its nominee, in the name of Grantor, or otherwise, to contest any real or personal property tax valuation, levy, or assessment. The power of attorney given is a power coupled with an interest and shall be irrevocable so long as any part of the Obligation remains unpaid or unperformed. Beneficiary shall have no obligation to exercise any of the foregoing rights and powers.

5.6 To insure the payment of taxes and assessments now, or hereafter may be, a Lien upon the Collateral, and to insure the payment of all premiums on policies of insurance required, Grantor, if required by Beneficiary after the occurrence and during the continuation of any Event of Default or any failure to pay taxes, assessments or insurance premiums as required herein, shall pay to Beneficiary each month, besides any other payments required, an amount equal to the taxes and special assessments levied or to be levied against the Collateral and the premium or premiums that will become due and payable to maintain the insurance on the Collateral, all as reasonably estimated by Beneficiary (giving due consideration to the previous year's taxes, assessments and premiums) less all deposits therefore already made, divided by the number of months remaining before ten (10) months prior to the date when the taxes, assessments and premiums become delinquent. If amounts paid to Beneficiary under the terms of this paragraph cannot pay all taxes, assessments and premiums as they become due, Grantor shall pay to Beneficiary upon demand all additional sums necessary to fully pay and discharge these items. All moneys paid to Beneficiary under this paragraph may be held by Beneficiary to pay the taxes, assessments and premiums before the same become delinquent or applied to the Obligation upon payment by Beneficiary from its own funds of the taxes, assessments and premiums. To the extent provision is not made for payment under this paragraph, Grantor shall remain obligated to pay all taxes, assessments and premiums as they become due and payable. Deposits made under this paragraph may be commingled with Beneficiary's general funds; Beneficiary shall have no liability to Grantor for interest on any deposits.

5.7 Grantor assigns, transfers and conveys to Beneficiary all compensation and every award of damages in any condemnation for public or private use of, or injury to, the Collateral or any part thereof, for the Obligation then remaining unpaid, and all such compensation and awards shall be paid directly to Beneficiary, to be used by Beneficiary to repay the Obligation in its discretion.

ARTICLE 6 **PROTECTION AND PRESERVATION OF BENEFICIARY'S INTEREST**

6.1 Grantor, by the payment of any such tax or taxes, shall protect Beneficiary against any loss from any taxation of indebtedness or deeds of trust (except for taxes related to interest on the Loan), direct or indirect, that may be imposed upon this Deed of Trust, the Lien of this Deed of Trust on the Collateral, or upon the Obligation, by any law, rule, regulation or levy of the federal government, any state government, or any political subdivision thereof. If the burden of such taxation cannot lawfully be shifted from Beneficiary to Grantor, Beneficiary may declare the entire Obligation due and payable ten (10) days after notice to Grantor.

6.2 If Grantor fails to pay any taxes, assessments, expenses or charges, to keep the Collateral free from Liens and claims of Liens, to maintain and repair the Collateral, make payments or perform under any Lease, or to procure and maintain insurance thereon, or otherwise

fail to perform as required herein, Beneficiary may advance the monies to pay the same, to accomplish such maintenance and repairs, to procure and maintain such insurance or to so perform; subject to the terms of the Loan Agreement, Beneficiary hereby may enter upon the Collateral for such purposes.

6.3 Upon reasonable written request by Beneficiary, Grantor shall appear in and prosecute or defend any action or proceeding that may affect the lien or the priority of the lien of this Deed of Trust or the rights of Beneficiary and shall pay all costs, expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the Lien or the priority of the Lien of this Deed of Trust or the rights of Beneficiary. Beneficiary may pay, purchase, contest or compromise any adverse claim, encumbrance, charge or Lien that in the judgment of Beneficiary appears to be prior or superior to the Lien of this Deed of Trust, other than any Permitted Exceptions.

6.4 Without obtaining the prior written consent of Beneficiary, or as specifically permitted under the Loan Agreement, Grantor shall not sell, transfer, convey, lease, assign or otherwise dispose of, or further encumber, all or any part of the Collateral or any interest, voluntarily or involuntarily, by operation of law or otherwise.

6.5 Without obtaining the prior written consent of Beneficiary, Grantor shall not consent to, or vote in favor of, including all or any part of the Collateral in any special improvement or similar district ("District"). Grantor shall immediately give notice to Beneficiary of any notification or advice that Grantor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Collateral in a District. Beneficiary may file a written objection to including all or any part of the Collateral in a District, either in its own name or in the name of Grantor, and to appear at, and participate in, any hearing regarding the formation of any District.

6.6 All rights, powers and remedies granted Beneficiary herein, or otherwise available to Beneficiary, are for the sole benefit and protection of Beneficiary, and Beneficiary may exercise any such right, power or remedy at its option and in its sole and absolute discretion with no obligation to do so. In addition, if, Beneficiary is given two or more alternative courses of action, Beneficiary may elect any alternative or combination of alternatives, at its option and in its sole and absolute discretion. All monies advanced by Beneficiary all amounts paid, suffered or incurred by Beneficiary in exercising any authority granted, including attorneys' fees, shall be added to the Obligation, shall be secured by this Deed of Trust, shall bear interest at the highest rate payable on the Obligation until paid, and shall be due and payable by Grantor to Beneficiary immediately without demand.

6.7 Grantor, upon request of Beneficiary, shall promptly correct any defect, error or omission that may be discovered in the content of this Deed of Trust or in the execution or acknowledgment. In addition, Grantor shall do such further acts as may be necessary or that Beneficiary may reasonably request to carry out more effectively the purposes of this Deed of Trust, to subject any property intended to be encumbered to the lien and security interest, and to perfect and maintain the lien and security interest.

6.8 Grantor waives all right of homestead and any other exemption in the Collateral under state or federal law existing or later enacted.

ARTICLE 7 **REPRESENTATIONS AND WARRANTIES**

7.1 Grantor is duly organized, validly existing and in good standing under the laws of the state in which it is organized. Grantor is qualified to do business and is in good standing under the laws of the state in which the Collateral is located and in each state in which it is doing business. Grantor has full power and authority to own its properties and assets and to carry on its business as now conducted. Grantor is authorized and permitted to execute and deliver this Deed of Trust. The execution, delivery and performance by Grantor of this Deed of Trust and all other documents and instruments relating to the Obligation will not result in any breach of the terms or conditions or constitute a default under any agreement or instrument under which Grantor is a party or is obligated. Grantor is not in default, following the expiration of all applicable notice and cure periods, in the performance or observance of any covenants, conditions or provisions of any such agreement or instrument.

7.2 The Liens, security interests and assignments created will be valid, effective, properly perfected and enforceable Liens, security interests and assignments.

7.3 All financial statements, statements as to ownership and other statements or reports previously or hereafter given to Beneficiary by or on behalf of Grantor or any Guarantor are and shall be true, complete and correct as of the date thereof. There has been no material adverse change in the financial condition or the results of the operation of Grantor or any Guarantor since the latest financial statement of Grantor given to Beneficiary.

7.4 Grantor has filed all federal, state and local tax returns or a timely extension therefor and has paid all of its current obligations before delinquent, including all federal, state and local taxes and all other payments required under federal, state or local law.

7.5 The Collateral is not in violation of the ADA and is not subject to any existing, pending or threatened investigation in connection with the ADA.

7.6 All representations and warranties made shall survive the execution, the execution and delivery of all other documents and instruments in connection with the Obligation, and until the Obligation has been fully paid and performed.

ARTICLE 8 **REMEDIES UPON EVENT OF DEFAULT**

8.1 **Rights and Remedies.** At any time after the occurrence of an Event of Default, Lender and/or Trustee shall have all of the rights and remedies described below, in addition to any other rights and remedies of Lender under the Note, Loan Agreement, or the other Loan Documents. To the fullest extent permitted by law, all of such rights and remedies shall be cumulative and the exercise of any one or more of them shall not constitute an election of remedies:

(a) **Receiver.** If an Event of Default shall have occurred and be continuing, Lender may, as a matter of right and without regard to the then-current value of the Collateral or the interest of Borrower, upon *ex parte* application and without notice to Borrower or anyone claiming under Borrower, apply to any court having jurisdiction to appoint a receiver for the Collateral or any portion thereof, and Borrower irrevocably consents to the appointment of a receiver upon such Event of Default. Any such receiver shall have the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender set forth in this Deed of Trust or any of the other Loan Documents. Employment by Lender shall not disqualify a person or entity from serving as receiver.

(b) **Cure; Protection of Security.** With or without notice, and without releasing Borrower from any obligation, Lender may (but shall not be obligated to) cure any breach or default of Borrower and, if it chooses to do so in its sole discretion, make such advances and do any and all other things that it may in its sole discretion consider necessary and appropriate to protect its Collateral and the security for this Deed of Trust.

(c) **Entry.** Lender, in person, by agent, or by court-appointed receiver, with or without bringing any action or proceeding, may terminate Borrower's right and license to collect the Rents, and to administer the Leases, and enter, take possession of, complete construction on, manage and operate, and lease or sell, all or any part of the Collateral, and may also do any and all other things in connection with those actions that Lender may in its sole discretion consider necessary or appropriate to protect the security of this Deed of Trust or that are otherwise permitted to be taken or conducted by Lender under the Note and Loan Agreement. If Lender so requests, Borrower shall assemble any Collateral that has been removed from the Premises and make all of it available to Lender at the Premises site. The entering upon and taking possession of the Premises, the collection of the Rents, and the application thereof as aforesaid, or any of such acts, shall not cure or waive any default or notice of default or invalidate any other right or remedy that Lender may have in response to such default or pursuant to such notice and, notwithstanding the continued possession of the Premises or the collection, receipt, and application of the Rents, by Lender, Trustee, or Lender's receiver or agent, Trustee or Lender shall be entitled to exercise every right provided for in any of the Note, Loan Agreement and/or Loan Documents or by law upon the occurrence of any Event of Default.

(d) **Uniform Commercial Code Remedies.** With respect to all or any part of the Collateral that constitutes Personal Property, Lender shall have all of, and may exercise any or all of, the rights and remedies of a secured party under the Utah Uniform Commercial Code.

(e) **Judicial Action.** Lender may commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Borrower, and Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that Borrower waives the defense of laches and any applicable statute of limitations. If this Deed of Trust is foreclosed by judicial action, and the Collateral sold at a foreclosure sale, the purchaser may, during any redemption period allowed, make such repairs or alterations on the Premises as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any sums so paid together with interest thereon from the time of such expenditure at the lesser of the default rate under the respective Note, or the maximum rate permitted by law, shall

be added to and become a part of the amount required to be paid for redemption from such sale. In addition, Lender will be entitled to a judgment providing that, if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for the deficiency.

(f) **Realization on Security.** Lender may resort to and realize upon or waive the security and any other security now or held by Lender in such order and manner as Trustee and Lender or either of them may, in their sole discretion, determine; which resort to such security may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both.

(g) **Power of Sale.** Lender may execute a written notice of such Event of Default and of its election to invoke this power of sale, or the power under Utah Code § 57-1-1 et seq. to cause all or part of the Collateral to be sold to satisfy the Obligation. Under this power of sale, Lender shall have the discretionary right to cause some or all of the Collateral, including any Collateral property that constitutes Personal Property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) **Sales of Personal Property.** For purposes of this power of sale, Lender may elect to treat as personal property any Collateral property that is intangible or that can be severed from the land or improvements without causing structural damage. If it chooses to do so, Lender may dispose of any personal property separately from the sale of real property, in any manner permitted by the Utah Uniform Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law. Lender shall have no obligation to clean-up or otherwise prepare any such Collateral for sale. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Obligation.

(ii) **Trustee's Sales of Real Property or Mixed Collateral.** Lender may also choose to dispose of some or all of the Collateral that consists solely of real property in any manner then permitted by applicable law. In its discretion, Lender may also or alternatively choose to dispose of some or all of the Collateral in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, if and as permitted in Utah. Borrower agrees that such a sale of personal property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together, will sometimes be referred to as a "Trustee's Sale."

(iii) **Trustee's Sale Procedures.** Before any Trustee's Sale, Lender or Trustee shall give and record such notice of default and election to sell as may then be required by law. When all legally mandated time periods have elapsed, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale, and Lender may impose such terms and conditions of sale as are permitted or allowed by applicable law. In accordance with then applicable law, Trustee may, and at Lender's request shall, continue any Trustee's Sale by public announcement at the time and place scheduled for that sale, or may, in its discretion, give a new notice of sale. Also, Lender may discontinue or rescind any notice of default or notice of sale before any Trustee's Sale as provided above, by executing and delivering to Trustee a written notice of such discontinuance or rescission. The exercise by Lender of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently

occurring, or impair the right of Lender to execute and deliver to Trustee, as above provided, other declarations or notices of default to satisfy the Obligation, nor otherwise affect any provision, covenant, or condition of the Note, Loan Agreement, or any Loan Document, or any of the rights, obligations, or remedies of Trustee or Lender.

(iv) Bidding at Trustee's Sale. At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, unless other terms and conditions of sale are prescribed by Lender in accordance with and as permitted by applicable law. Any person, including, without limitation, Borrower or Lender, may purchase at such sale, and Borrower covenants to warrant and defend the title of such purchaser or purchasers. Trustee shall execute and deliver to the purchaser(s) at such sale a deed or deeds conveying the property being sold without any covenant or warranty, express or implied. The recitals in any such Trustee's deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness.

(h) Single or Multiple Foreclosure Sales. If the Collateral consists of more than one lot, parcel or item of property, Lender may, to the extent permitted by applicable law: (i) designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and (ii) elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions, each of which may be separately noticed if so elected by Lender and permitted by applicable law; or in any other manner Lender may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale"). If it chooses to have more than one Foreclosure Sale, Lender at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and places and in such order as it may deem to be in its best interests, all as may be permitted under applicable law. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Collateral that has not been sold until all of the Obligations have been paid in full.

(i) Releases, Extensions, Modification and Additional Security. Without affecting the liability of any person for payment of any of the Obligations, Lender may make any agreement or take any action extending the maturity or otherwise altering the terms or increasing the amount of any of the Obligations and accept additional security or release all or a portion of the Collateral and/or other security for the Obligations.

(j) Acceleration Not Required. Lender may take any of the actions permitted above regardless of the adequacy of the security for the Obligations, or whether any or all of the Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

8.2 Payment of Costs, Expenses, and Attorneys' Fees. All costs and expenses reasonably incurred by Trustee and Lender in enforcing the remedies available to them or otherwise protecting the Collateral or other rights or interests of Lender (including, without limitation, court costs and attorneys' fees, whether incurred in litigation or not, expenses for evidence of title, appraisals and surveys and trustees' fees, and costs and fees relating to any

bankruptcy, reorganization, or insolvency proceeding) shall constitute an additional obligation of Borrower to Lender. Borrower shall immediately reimburse Lender and Trustee for all costs and expenses that Lender or Trustee may incur by reason of, or arising out of, or in connection with: (a) any Default or Event of Default; (b) any action or proceeding in which Lender or Trustee may appear or commence to protect, preserve, exercise or enforce their rights, remedies or security interests under this Deed of Trust, or under any document or instrument evidencing the Obligations secured by this Deed of Trust, or which otherwise relates to the Premises, including all appeals therefrom; (c) the performance of any act authorized or permitted hereunder; and (d) the exercise of any other rights or remedies under this Deed of Trust, or under any document or instrument evidencing the Obligations secured by this Deed of Trust, or otherwise relating, to the protection of Lender's or Trustee's rights and interest or under any Loan document, whether or not a suit or proceeding is instituted. Such costs and expenses shall include without limitation the fees, charges and expenses of attorneys, engineers, accountants, appraisers, expert witnesses, consultants and other professional assistants and advisors, costs and expenses of searching records, examining title and determining rights in, title to, or the value of, the Premises, or the boundaries thereof, including but not limited to title company charges, title insurance premiums, survey costs, publication costs, and other charges incident thereto, all whether or not a suit or proceeding is instituted. Borrower agrees to and shall pay, immediately and without demand, all sums so expended by Lender or Trustee, together with interest from the date of expenditure, at the highest legal interest rate then payable under the Loan Documents, all of which sums plus interest shall constitute additional Obligations secured by this Deed of Trust

8.3 Remedies Not Exclusive. Trustee and/or Lender shall be entitled to enforce the payment and performance of the Obligation and to exercise any and all rights and powers under this Deed of Trust, any other Loan Document, notwithstanding the fact that some or all of the Obligations may now or later be otherwise secured. Trustee and/or Lender shall be entitled to enforce all such rights concurrently or separately, in such order and manner as they or either of them may in their absolute discretion determine. No remedy is intended to be exclusive of any other remedy, but each shall be cumulative and in addition to the others, to the fullest extent permitted by law.

8.4 Waiver of Marshaling. Borrower waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to require upon foreclosure sales of assets in a particular order. Each successor and assign of Borrower, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

ARTICLE 9 GENERAL PROVISIONS

9.1 Request for Notice. Lender requests that any Notice of Default issued or filed by any person or entity be sent to Lender at its address on the first page of this Deed of Trust.

9.2 Grantor shall defend, indemnify and hold harmless Beneficiary, any successors to Beneficiary's interest in the Collateral, any purchaser of the Collateral upon foreclosure, and all shareholders, directors, officers, employees and agents of the foregoing and their heirs, personal representatives, successors and assigns from and against all claims, costs, expenses, actions, suits,

proceedings, losses, damages and liabilities of any kind, including but not limited to all amounts paid in settlement of, and all costs and expenses (including attorneys' fees) incurred in defending or settling, any actual or threatened claim, action, suit or proceeding, directly or indirectly arising out of or relating to the Obligation, this Deed of Trust, or the Collateral, including but not limited to (i) any violation of or claim of violation of the ADA regarding the Collateral; (ii) any violation of applicable environmental laws, rules, regulations, and court or administrative orders; or (iii) any breach of any of the warranties, representations and covenants contained herein. This indemnity provision shall continue in full force and effect and shall survive the payment and performance of the Obligation, the release of record of the lien of this Deed of Trust, any foreclosure or deed in lieu of foreclosure of this Deed of Trust, the exercise by Beneficiary of any other remedy under this Deed of Trust or any other document or instrument evidencing or securing the Obligation, and any suit, proceeding or judgment against Grantor by Beneficiary.

9.3 The acceptance of this Deed of Trust by Beneficiary shall not be considered a waiver of or to affect or impair any other security that Beneficiary may have, acquire simultaneously, or hereafter acquire for the payment or performance of the Obligation, nor shall the taking by Beneficiary at any time of any such additional security be construed as a waiver of or to affect or impair the security of this Deed of Trust; Beneficiary may resort, for the payment or performance of the Obligation, to its several securities therefor in such order and manner as it may determine.

9.4 Without notice or demand, without affecting the obligations of Grantor or the personal liability of any person for payment or performance of the Obligation, and without affecting the Lien or the priority of the Lien of this Deed of Trust, Beneficiary, may: (i) extend the time for payment of all or any part of the Obligation, accept a renewal note therefor, reduce the payments thereon, release any person liable for all or any part thereof, or otherwise change the terms of all or any part of the Obligation; (ii) take and hold other security for the payment or performance of the Obligation and enforce, exchange, substitute, subordinate, waive or release any such security; (iii) consent to making any map or plat of the Collateral; (iv) join in granting any easement on or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Collateral; (v) join in any extension or subordination agreement; or (vi) direct Trustee to release any part of the Collateral from this Deed of Trust. Any such action by Beneficiary, or Trustee at Beneficiary's direction, may be taken without the consent of any junior lienholder and shall not affect the priority of this Deed of Trust over any junior lien.

9.5 Grantor waives and agrees not to assert: (i) any right to require Beneficiary to proceed against any guarantor, to proceed against or exhaust any other security for the Obligation, to pursue any other remedy available to Beneficiary, or to pursue any remedy in any particular order or manner; (ii) the benefits of any legal or equitable doctrine or principle of marshalling; (iii) the benefits of any statute of limitations affecting the enforcement; (iv) demand, diligence, presentation for payment, protest and demand, and notice of extension, dishonor, protest, demand and nonpayment, relating to the Obligation; and (v) any benefit of, and any right to participate in, any other security now or hereafter held by Beneficiary.

9.6 Beneficiary may inspect the Collateral at all reasonable times.

9.7 Time is of the essence.

9.8 If more than one Grantor is named herein, the word "Grantor" shall mean all and any one or more of them, severally and collectively. All liability shall be joint and several. This Deed of Trust shall be binding upon, and shall inure to the benefit of, the parties and their heirs, personal representatives, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary but also any future owner and holder, including pledgees, of the Note. The provisions shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

9.9 This Deed of Trust cannot be changed except by agreement, in writing, signed by Grantor and Beneficiary.

9.10 No setoff or claim that Grantor now has or may have against Beneficiary shall relieve Grantor from paying or performing the Obligation.

9.11 Each term, condition and provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law but if any term, condition or provision of this Deed of Trust shall be held to be void or invalid, the same shall not affect the remainder which shall be effective as though the void or invalid term, condition or provision had not been contained herein.

9.12 This Deed of Trust, the Obligation and the agreements of any person or entity to pay or perform the Obligation and all claims or controversies arising out of or relating to this Deed of Trust shall be governed by and construed according to the laws of the State of Utah, without giving effect to conflict of laws principles which might otherwise require the application of the laws of another jurisdiction. Venue for all actions arising from this Deed of Trust shall be in the District Court in and for the County of Salt Lake, State of Utah or the county in which the Collateral is located. The parties waive any objection which either may have based on lack of jurisdiction or improper venue or forum non conveniens to any suit or proceeding instituted by either party under this Deed of Trust in any state or federal court with jurisdiction over the County of Salt Lake, State of Utah, or the county where the Collateral is located, and consent to granting such legal or equitable relief as deemed appropriate by such court.

9.13 All notices required or permitted to be given shall be in writing and may be given in person, by United States mail or by delivery service with a nationally recognized carrier. Any notice directed to a party to this Deed of Trust shall become effective upon the earliest of: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, two days after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Deed of Trust or such other address as that party, may specify by notice to the other parties. Any notice to Beneficiary or Grantor shall be sent to the above address.

9.14 As further security for the payment and performance of the Obligation, Beneficiary shall be subrogated and have the rights of the lien Beneficiary paid, although released of record, of any liens or encumbrances paid from the proceeds of the Obligation.

9.15 Assignment and Participation by Lender. Lender shall have the right, at any time and from time to time, without notice to or consent from Borrower, to assign or sell the Obligations, and/or to grant participations in the Obligations, or to include such obligations in a securitized pool of indebtedness, accompanied by an assignment and/or delegation of any or all related rights or obligations of Lender under the Loan Documents, without the need for any form of consent from Borrower.

9.16 THE UNDERSIGNED AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) 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 THE UNDERSIGNED AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DEED OF TRUST, THE NOTE, THE LOAN AGREEMENT OR ANY OTHER AGREEMENTS, DOCUMENTS OR INSTRUMENTS EXECUTED OR DELIVERED IN CONNECTION WITH, OR OTHERWISE RELATING TO, THE OBLIGATION OR ANY RELATIONSHIP BETWEEN THE GRANTOR AND BENEFICIARY. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER RELATED DOCUMENTS.

9.17 ORAL AGREEMENTS NOTICE. ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF ANY COMMITMENT OR THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, (5) FORBEAR FROM ENFORCING REPAYMENT OF ANY LOAN OR THE EXERCISE OF ANY REMEDY UNDER THIS AGREEMENT OR ANY LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATING TO ANY LOAN ARE NOT ENFORCEABLE.

[Signature Page Follows]

IN WITNESS WHEREOF, this Deed of Trust is executed on the date set forth below to be effective as of the date stated above.

BORROWER:

BLACK RIDGE KD-DAI, LLC, a Utah limited liability company

By: DAI Managers, LLC, a Utah limited liability company
Its: Co-Manager

By: 
Name and Title: Bryan Flamm, Manager

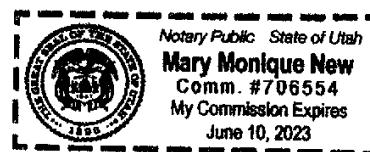
By: KD II Land & Development LLC, a Utah limited liability company
Its: Co-Manager

By: 
Name and Title: Adam Kessler, Manager

STATE OF UTAH)
: ss
COUNTY OF Salt Lake)

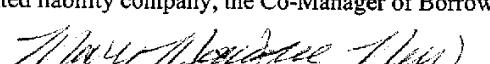
Subscribed and sworn before me on April 24th, 2022, by Bryan Flamm as Manager of DAI Managers, LLC, a Utah limited liability company, the Co-Manager Borrower.

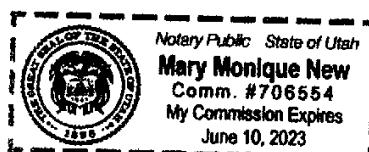

Notary Public



STATE OF UTAH)
: ss
COUNTY OF Salt Lake)

Subscribed and sworn before me on April 24th, 2022, by Adam Kessler as Manager of KD II Land & Development LLC, a Utah limited liability company, the Co-Manager of Borrower.


Notary Public



Witness my hand and official seal.
My commission expires:

6-10-23

Exhibit A**Legal Description**

Parcel 1: (SG-BRC-5-501, SG-BRC-5-502, SG-BRC-5-503, SG-BRC-5-504, SG-BRC-5-505, SG-BRC-5-506, SG-BRC-5-507, SG-BRC-5-508, SG-BRC-5-509, SG-BRC-5-510, SG-BRC-5-511, SG-BRC-5-512, SG-BRC-5-513, SG-BRC-5-514, SG-BRC-5-515, SG-BRC-5-516, SG-BRC-5-517, SG-BRC-5-518, SG-BRC-5-519, SG-BRC-5-520, SG-BRC-5-521, SG-BRC-5-522, SG-BRC-5-523, SG-BRC-5-524, SG-BRC-5-525, SG-BRC-5-526, SG-BRC-5-527, SG-BRC-5-528, SG-BRC-5-529, SG-BRC-5-530, SG-BRC-5-531, SG-BRC-5-532, SG-BRC-5-533, SG-BRC-5-534, SG-BRC-5-535, SG-BRC-5-536, SG-BRC-5-537, SG-BRC-5-538, SG-BRC-5-539, SG-BRC-5-540, SG-BRC-5-541 and SG-BRC-5-542 and SG-BRC-5-COMMON)

Units 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, and Common Areas and Private Streets, Alleys, or Lanes, of BLACK RIDGE COVE PHASE 5, according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Parcel 2: (SG-6-2-36-414)

Beginning at a point which is North 88°42'05" West 1234.76 feet along the North section line and South 00°00'00" East 1787.83 feet from the North 1/4 corner of Section 36, Township 42 South, Range 16 West of the Salt Lake Base and Meridian said point being a point on the Easterly boundary line of Black Ridge Cove Subdivision Phase 5 and running thence along said Easterly boundary line through the following three (3) courses: North 17°15'55" West 68.33 feet to a point on the arc of a non-tangent curve to the left having a radius of 275.00 feet; thence Northeasterly 364.66 feet along the arc of said curve through a central angle of 75°58'33", the radial direction bears North 17°15'55" West, to the point of tangency; thence North 03°14'28" West 115.30 feet to a point on the Southerly Right of Way of Cloud Drive said point also being a point on the arc of a non-tangent curve to the right having a radius 815.00 feet; thence along said Southerly Right of Way through the following two (2) courses: Southeasterly 43.89 feet along the arc of said curve through a central angle of 03°05'08", the radial direction bears South 04°26'32" West, to a point of compound curvature of a curve to the right having a radius of 415.00 feet; thence Southeasterly 597.87 feet along the arc of said curve through a central angle of 82°32'37" to a point of non-tangency; thence South 85°47'18" West 571.96 feet to the point of beginning.

Parcel 3: (SG-6-2-36-415)

Beginning at a point which is North 88°42'05" West 556.94 feet along the North section line and South 00°00'00" East 387.69 feet from the North 1/4 corner of Section 36, Township 42 South, Range 16 West of the Salt Lake Base and Meridian and running thence South 36°24'36" East 118.32 feet; thence South 24°04'28" East 34.98 feet; thence South 17°33'54" East 128.53 feet; thence South 01°22'27" East 114.16 feet; thence South 04°41'21" West 123.54 feet; thence South 26°10'09" West 96.85 feet; thence South 03°17'55" West 87.80 feet; thence South 06°53'06" West 146.95 feet; thence South 19°52'31" East 72.60 feet; thence South 26°23'30" West 326.06 feet to a point on the Northerly Right of Way of Cloud Drive said point also being a point on the arc of a non-tangent curve to the left having a radius of 485.00 feet; thence along said Northerly Right of Way through the following two (2) courses: Southeasterly 519.62 feet along the arc of said curve through a central angle of 61°23'09", the radial direction bears South 68°54'49" West, to a point of compound curvature of a curve to the left having a radius of 885.00 feet; thence Northwesternly 37.42 feet along the arc of said curve through a central angle of 02°25'21" to a point of non-tangency; thence North 03°14'28" West 22.79 feet to the point of curvature of a curve to the left having a radius of 107.00

feet; thence Northwesterly 29.08 feet along the arc of said curve through a central angle of $15^{\circ}34'12''$ to the point of reverse curvature of a curve to the right having a radius of 165.50 feet; thence Northeasterly 208.45 feet along the arc of said curve through a central angle of $72^{\circ}09'51''$ to the point of reverse curvature of a curve to the left having a radius of 792.42 feet; thence Northeasterly 464.56 feet along the arc of said curve through a central angle of $33^{\circ}35'24''$, the radial direction bears North $37^{\circ}38'20''$ West, to the point of reverse curvature of a curve to the right having a radius of 440.57 feet; thence Northeasterly 49.15 feet along the arc of said curve through a central angle of $06^{\circ}23'30''$, the radial direction bears South $71^{\circ}24'34''$ East, to the point of compound curvature of a curve to the right having a radius of 243.00 feet; thence Northeasterly 110.15 feet along the arc of said curve through a central angle of $25^{\circ}58'14''$ to a point on the arc of a curve to the left having a radius 377.50 feet; thence Northwesterly 26.47 feet along the arc of said curve through a central angle of $04^{\circ}01'03''$, the radial direction bears South $56^{\circ}14'58''$ West, to a point of non-tangency; thence North $43^{\circ}03'45''$ East 45.52 feet to a point on the arc of a curve to the right having a radius of 455.00 feet; thence Northeasterly 83.09 feet along the arc of said curve through a central angle of $10^{\circ}27'48''$, the radial direction bears South $44^{\circ}04'13''$ East, to a point of non-tangency; thence North $54^{\circ}59'30''$ East 15.65 feet to the point of beginning.