

Trust Deed Page 1 of 27

Gary Christensen Washington County Recorder
 09/25/2025 03:24:37 PM Fee \$40.00 By
 COTTONWOOD TITLE INSURANCE AGENCY,
 INC.

WHEN RECORDED MAIL TO:

ANCHOR LOANS, LP
 One Baxter Way #220
 Thousand Oaks, CA 91362
 Attention: Paul Stockamore

Tax Parcel Nos.: ~~N/A~~ W-PL
 192872-CMF

(Space Above For Recorder's Use)

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

THIS CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (as it may be amended, modified, extended, renewed, restated, or supplemented from time to time, the "**Deed of Trust**") is made as of September 25, 2025, by **CW THE CLUB, LLC**, a Utah limited liability company ("**Trustor**"), whose mailing address is 610 N 800 W, Centerville, UT 84014, to COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation ("**Trustee**"), whose mailing address is 1996 East 6400 South, Suite 120, Murray, UT 84121, for the benefit of **ANCHOR LOANS, LP**, a Delaware limited partnership (together with its successors and/or assigns, "**Agent**"), whose mailing address is One Baxter Way #220, Thousand Oaks, CA 91362, as administrative and collateral agent for the benefit of each of the Lenders (as defined in the Master Loan Agreement (as hereinafter defined)) (in such capacity as agent, "**Beneficiary**").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, assigns, bargains, sells, and conveys to Trustee and its successors and assigns IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the use, benefit and security of Beneficiary and its successors and/or assigns, under and subject to the terms and conditions hereinafter set forth, all of Trustor's right, title and interest, whether now owned or existing or hereafter obtained, in that certain real property located in the County of Washington, State of Utah, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Property**"), together with all of Trustor's right, title and interests, whether now owned or existing or hereafter obtained, erected, placed or otherwise entered into, in and to the following (together with the Property, collectively, the "**Trust Estate**");

I. Any and all buildings, structures and other improvements and all additions or alterations thereto or replacements thereof, on or in the Property, including fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "**Improvements**") and together with the Property and all rights attendant thereto as further described below, the "**Project**"), all of which shall be deemed and construed to be a part of the real property;

II. all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Project or any portion thereof, and all right, title and interest of Trustor thereunder including all rights of Trustor against tenants, lessees or guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "**Leases**");

III. all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Project (collectively, the “**Rents**”);

IV. intentionally omitted;

V. all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Project or as a means of access thereto (including all rights pursuant to any trackage agreement and all rights with respect to any common driveways, sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Project, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

VI. any covenants, conditions, and restrictions affecting the Project, or any master planned community of which the Project is a part, including all voting rights, declarant’s rights, developer rights, and similar rights arising under any such covenants, conditions, and restrictions (collectively, the “**CC&Rs**”);

VII. any plans and specifications, drawings, renderings, charts, schedules and drafts, including the final plans and specifications approved by any Governmental Authority (as defined in the Master Loan Agreement (as defined below)) with respect to the renovation or any existing or future development or construction of the Project (collectively, the “**Plans**”), provided however such Plans may only be used in conjunction with the Project;

VIII. any contracts, agreements, and licenses to which Trustor is a party or beneficiary, in connection with the acquisition, ownership, use, occupancy, renovation, development, construction, marketing and sale of the Project or any portion thereof, including any and all construction agreements, architect agreements, engineer agreements, management agreements, development agreements and access agreements (collectively and individually, the “**Contracts**”);

IX. all permits, licenses, authorizations, variances, development and land use entitlements, rights and privileges, approvals, consents, drawings, renderings, financial information, schedules, marketing materials and other personal property in connection with the acquisition, ownership, use, occupancy, renovation, development, construction, marketing and sale of the Project or any portion thereof (collectively and individually, the “**Project Rights**”), except for trademarked items; provided that Trustor shall grant Beneficiary a non-exclusive, royalty-free license to use such trademarked items in connection with the acquisition, ownership, use, occupancy, renovation, development, construction, marketing, and sale of the Project.

X. all of Trustor’s other personal property assets (collectively, the “**Personal Property**”), including “Accounts”, “Cash proceeds”, “Chattel paper”, “Collateral”, “Deposit accounts”, “Documents”, “Electronic chattel paper”, “Equipment”, “Fixtures”, “General intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment property”, “Letter-of-credit rights”, “Noncash proceeds”, “Proceeds”, “Supporting obligations” and “Tangible chattel paper”, as each such term is defined in the Uniform Commercial Code as codified in the applicable state or states, including as codified within the state which the Property is located and/or the state in which Trustor is organized (as amended, restated, revised or otherwise modified from time to time, the “**Commercial Code**”);

XI. all proceeds of insurance in effect with respect to the Project, the Personal Property, or any other part of the Trust Estate, and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (including any awards resulting from a change of grade of streets and awards for severance damages); and

XII. all proceeds of the foregoing and rights and privileges attendant thereto.

Trustor is not aware of any prohibition or restriction on Trustor's right to assign any CC&Rs, Plans, Contracts or Project Rights except as expressly disclosed to Beneficiary in writing.

To HAVE AND HOLD, FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the Obligations, which include:

(a) Payment and performance of all of the Obligations and Indebtedness (each as defined in the Master Loan Agreement) of Trustor, whether now existing or hereafter arising pursuant to that certain Revolving Master Loan Agreement (the "**Master Loan Agreement**") dated September 25, 2025, by and among Beneficiary and any other entities that may be lenders thereunder from time to time, Trustor, and any other entities that may be borrowers thereunder from time to time (collectively "**Borrower**"), pursuant to which Lenders have agreed to make a loan to, among others, Trustor, in the initial maximum commitment amount of Twenty-Five Million Five Hundred Thousand and No/100 Dollars (\$25,500,000.00) (the "**Loan**"). This Deed of Trust, each Note (as defined in the Master Loan Agreement), and any other documents, agreements or other instruments given to evidence or further secure the payment and performance of any or all of the Loan, as each of the foregoing may be amended, modified, extended, or renewed from time to time, shall be collectively referred to herein as the "**Loan Documents**";

(b) payment of all other sums, with interest thereon, that may hereafter be loaned to Trustor or any other Borrower under the Master Loan Agreement;

(c) performance of every Obligation of Trustor contained in any agreement, document, or instrument now or hereafter executed by Trustor reciting that the Obligations thereunder are secured by this Deed of Trust;

(d) for the benefit of Beneficiary, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Trust Estate is bound or may be affected; and

(e) all modifications, extensions and renewals of any of the Obligations secured hereby done in accordance with the terms of the Loan Documents, however evidenced, including: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not, in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note.

Notwithstanding the above or anything in this Deed of Trust to the contrary, however, this Deed of Trust shall not secure (i) Trustor's or any other Person's Obligations under any Environmental Indemnity Agreement (as defined in the Master Loan Agreement), (ii) any third party guaranty of the Obligations under the Loan Documents, including any Guaranty (as defined in the Master Loan Agreement), (iii) the pledge of membership interests in Trustor as additional collateral under a Pledge and Security Agreement, or (iv) any other Loan Document that specifically states that it is not secured by this Deed of Trust. All initially capitalized terms used herein without definition are as defined in the Master Loan Agreement. The rate of interest of the obligation secured hereunder may vary from time to time.

ARTICLE 1
COVENANTS AND AGREEMENTS OF TRUSTOR

1.1 **General Covenants.** Trustor hereby covenants and agrees as follows:

(a) **Payment and Performance of Secured Obligations.** Trustor shall pay when due or perform each of the Obligations of Trustor as set forth in the Loan Documents (in each case, subject to any applicable notice and cure periods).

(b) **Maintenance, Repair, Alterations.** Trustor shall keep the Trust Estate in good condition and repair in all material respects at all times, ordinary wear and tear excepted, subject to and in accordance with the terms and conditions of the Loan Documents.

(c) **Required Insurance.** Trustor shall at all times provide, maintain and keep in force (or cause to be provided, maintained and kept), policies of insurance as set forth in the Master Loan Agreement. Any insurance proceeds shall be treated, used and otherwise applied in accordance with the terms and conditions set forth in the Master Loan Agreement. Upon the occurrence and during the continuation of an Event of Default, Trustor shall comply with the terms and conditions set forth in the Master Loan Agreement, as applicable, regarding insurance impounds, if any.

(d) **Taxes.** Trustor shall pay all real property taxes and assessments, general and special, personal property taxes, taxes on any Account, and all other taxes and assessments of any kind or nature whatsoever, as required by the Master Loan Agreement subject to Trustor's right to defer payment of and contest the same to the extent expressly permitted in accordance with the Master Loan Agreement. Upon the occurrence and during the continuation of an Event of Default, Trustor shall comply with the terms and conditions set forth in the Master Loan Agreement regarding imposition impounds, if any. Additionally, Trustor will not, without the prior written approval of Beneficiary, which may be withheld for any reason, affirmatively consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or allow to occur any other event, that would or might result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Property, and this provision shall serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Trustor or any other person or entity include all or any portion of the Property in such district or districts, whether formed or in the process of formation, without first obtaining Beneficiary's express written consent, the rights of Beneficiary in the Property pursuant to this Deed of Trust or following any foreclosure of this Deed of Trust, and the rights of any person or entity to whom Beneficiary might transfer the Property following a foreclosure of this Deed of Trust, shall be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Beneficiary or any portion thereof as a result of inclusion of the Property in such district or districts.

(e) **Eminent Domain.** Trustor shall comply with the terms and conditions set forth in the Master Loan Agreement in the event that any proceeding or action is commenced for the taking of the Trust Estate, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation, or if the same be taken or damaged by reason of any public improvement or taking.

(f) **Assignment of Policies Upon Foreclosure.** In the event of foreclosure of this Deed of Trust, whether by judicial proceedings or a sale under the power of sale, or any other Transfer or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by Section 1.1(c) or otherwise by the Master

Loan Agreement shall inure to the benefit of and pass to Beneficiary, to the extent such policies are assignable pursuant to the terms thereof.

(g) **Acceleration Upon Prohibited Transfers.** In order to induce Beneficiary to make the Loan, Trustor agrees that, in the event of any Transfer that is not expressly permitted by the Loan Documents, Beneficiary shall have the absolute right, at its option, without prior demand or notice (except as expressly provided in the Master Loan Agreement), to declare all sums secured hereby immediately due and payable.

(h) **Additional Security.** No other security now existing, or hereafter taken, to secure the Obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, including any other "Deed of Trust" (as defined in the Loan Agreement), execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations (except to the extent expressly agreed to by Beneficiary in writing at such time). In the event Beneficiary or any Lender at any time holds additional security for any of the Obligations, Beneficiary may, following the occurrence and during the continuance of an Event of Default, enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

ARTICLE 2

ASSIGNMENT OF LEASES AND RENTS

2.1 **Assignment of Leases and Rents.** Trustor hereby absolutely and collaterally assigns and transfers to Beneficiary all of Trustor's right, title and interest in and to the Leases and Rents of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, during the existence of an Event of Default (and only during such time), power and authority to collect the Rents. At any time, Beneficiary may, at its option, notify any tenants or other parties of the existence of this assignment. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments of Rent under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Beneficiary shall not exercise such rights, and Trustor shall have the right to collect such Rents (but not more than three (3) months in advance (or such lesser period in order to comply with Applicable Laws) unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, and to otherwise exercise and receive Trustor's rights and benefits as landlord under the Leases, so long as an Event of Default shall not have occurred and be continuing hereunder or under the other Loan Documents. The assignment of the Leases and Rents of the Trust Estate in this Article 2 is intended to be an absolute and unconditional present assignment from Trustor to Beneficiary and not merely the passing of a security interest. Beneficiary's rights to the Rents following the occurrence and during the continuance of an Event of Default are not contingent upon and may be exercised without possession of the Trust Estate. Trustor hereby waives any right, claim or demand which Trustor may now or hereafter have against any present or future tenant, lessee or licensee by reason of such payment of Rents to Beneficiary, and any such payment shall discharge such tenant's, lessee's or licensee's obligation to make such payment to Trustor.

2.2 **Collection Upon an Event of Default.** Upon the occurrence and during the continuance of an Event of Default, Beneficiary may, in addition to and without limitation of the remedies provided elsewhere herein, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, subject to the rights of unrelated, third-party tenants under Leases, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents

(including those past due and unpaid) and apply the same in accordance with Section 2.3. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents as aforesaid, shall not cure or waive any Event of Default or notice of an Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of the Event of Default. Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of Beneficiary's management, operation and maintenance of the Project, excepting (i) the liability of Beneficiary to account as hereinafter set forth and (ii) any liability attributable to Beneficiary's gross negligence, illegal acts, fraud or willful misconduct, all as determined by a final, non-appealable order or judgment of a court of competent jurisdiction.

2.3 **Rents and Leases**. Upon such entry, Beneficiary shall, after payment of all costs, charges and expenses of collection (including reasonable attorneys' fees) and operation of the Project (including reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined by Beneficiary in accordance with the Master Loan Agreement to the fullest extent permitted by Applicable Law. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable. Any purchaser at a trustee's sale or foreclosure sale may, if it so elects in writing, be subrogated to and succeed to all the rights of Trustor under any or all Leases. In addition to and without limitation of the foregoing, Beneficiary shall also be entitled to such rights and remedies as available to it under Applicable Law.

2.4 **Collecting Rents**. Without limiting the effect of any other provision in this Deed of Trust, following the occurrence and during the continuance of an Event of Default and upon delivery of notice to the tenants of the existence of an Event of Default, to the maximum extent permitted by Applicable Law, Beneficiary shall be entitled to collect and receive all Rents and exercise all assigned rights that accrued but remain unpaid by Trustor or its agent on that date, and all Rents and assigned rights that accrue after that date so long as any Event of Default is continuing.

2.5 **Mortgagee in Possession**. It is not the intention of the parties hereto that an entry by Beneficiary upon the Property under the terms of this Deed of Trust shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.

2.6 **Indemnity Against Tenant Claims**. Trustor hereby agrees to indemnify and hold harmless Beneficiary and each Lender for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including, without limitation, reasonable legal fees and expenses and claims or demands for security deposits deposited with Trustor from tenants of space in the Improvements (except to the extent such security deposits were delivered to Beneficiary), howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment and/or the Leases; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the Obligations hereby and shall be secured by any and all other instruments securing said Obligations, in all cases, except to the extent attributable to Beneficiary's illegal acts, fraud, gross negligence or willful misconduct, as determined by a final, nonappealable order or judgment from a court of competent jurisdiction.

2.7 **No Obligation to Perform**. Nothing contained herein shall obligate or be construed to obligate Beneficiary or any Lender to perform any obligations of Trustor under any Lease (including any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under

any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Property by Beneficiary, this assignment shall not operate to place upon Beneficiary or any Lender any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, nor shall it operate to make Beneficiary or any Lender responsible or liable for any waste committed on the Property by the tenants, or any other party or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property. Neither Beneficiary nor any Lender shall be liable for any loss sustained by Trustor resulting from Beneficiary's failure or inability to collect Rents, proceeds or other payments, or to let the Property, or from any other act or omission of Beneficiary in managing the Property. The execution of this assignment by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession by Beneficiary.

2.8 **Right to Awards.** Trustor hereby further presently and absolutely assigns to Beneficiary, subject to the terms and provisions of this assignment, all of Trustor's right, title and interest in and to: (a) any award or other payment which Trustor may hereafter become entitled to receive with respect to any of the Leases as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving the tenants under such Leases; and (b) any and all payments made by or on behalf of any tenant of any part of the Property in lieu of Rent (but as if such payments were Rent).

ARTICLE 3
ASSIGNMENT OF PLANS,
CONTRACTS AND PROJECT RIGHTS

3.1 **Assignment of Plans, Contracts and Project Rights.** In addition to and without limitation of the granting clause as set forth above, Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary as additional collateral for the Obligations, all of Trustor's right, title and interest in and to the Project, including without limitation, the Plans, Contracts, CC&Rs, Project Rights and all other rights with respect to the ownership, operation and permitted development of the Project, except for trademarked items related to the Property in which the Trustor holds the trademark or intellectual rights; provided, however, that Beneficiary shall have a non-exclusive, royalty-free, irrevocable license and right to use any such trademarked items, including but not limited to names, logos, and branding, in connection with the ownership, operation, marketing, development, and sale of the Project (collectively referred to as the "**Development Collateral**"). Trustor hereby confirms the assignment and transfer of such Development Collateral to Trustee for the benefit of Beneficiary, with Beneficiary being entitled upon the occurrence and during the continuance of an Event of Default to exercise all of its rights and remedies as set forth herein, under any other Loan Document, at law or in equity.

3.2 **Consents.** To the extent required by Beneficiary and not otherwise obtained pursuant to any other Loan Document, Trustor shall use commercially reasonable efforts to promptly obtain and deliver to Beneficiary any other third party consent to assignment of such material Development Collateral as may be reasonably required by Beneficiary from time to time. Each third party consent described in this Section shall be in substantially the same form as provided to Trustor by Beneficiary upon Trustor's written request, with any material modifications thereto having been reasonably approved by Beneficiary. Absent the prior written consent of Beneficiary, Trustor will not hereafter enter into any material Development Collateral that prohibits the collateral assignment of such Development Collateral to Beneficiary.

3.3 **Development Collateral Covenants.** With respect to all Development Collateral assigned to Beneficiary pursuant to this Deed of Trust: (a) Trustor is not aware of any default, event, condition or circumstance with respect thereto, the existence of which would result in either a Material Adverse Effect

or an Event of Default; (b) Trustor shall perform and observe in a timely manner the covenants, conditions, obligations and agreements on the part of Trustor to be performed or observed thereunder by Trustor to the extent the failure to do so would result in a Material Adverse Effect or Event of Default; (c) at Trustor's sole cost and expense, Trustor shall demand and diligently pursue the performance of (and not waive, excuse, condone or in any manner release or discharge) any counterparty thereto to the extent necessary to avoid the occurrence of a Material Adverse Effect or Event of Default; and (d) except as otherwise permitted under the Master Loan Agreement, Trustor shall not alter, amend, change, terminate or cancel any such assigned Development Collateral if such alteration, amendment, change, termination or cancellation would result in a Material Adverse Effect or Event of Default.

3.4 **Authority; No Other Transfers.** Trustor represents and warrants that: (a) Trustor has full title and, except to the extent any applicable third party consent is required for the assignment of any material Development Collateral in accordance with Section 3.2, the right to assign to Beneficiary pursuant to this Deed of Trust any and all of its interests in and to all material Development Collateral free and clear of any liens other than liens approved by Beneficiary in writing; (b) no previous Transfer of its interest in any material Development Collateral has been made by Trustor or any Affiliate of Trustor, or to Trustor's knowledge, by any other Person (other than those transferring such Development Collateral to Trustor and those which are no longer effective and to other "Lenders" (as defined in the Master Loan Agreement)); and (c) to Trustor's knowledge, all required consents and approvals required for the execution, delivery, effectiveness, validity and enforceability of the assignment of the material Development Collateral have been obtained. Except for Transfers to Beneficiary or Lenders pursuant to this Deed of Trust and any other Loan Document and Transfers otherwise expressly permitted in accordance with the Loan Documents, Trustor agrees not to Transfer its interest in any material Development Collateral until the Loan has been indefeasibly repaid in full.

3.5 **License.** So long as no Event of Default has occurred and is continuing, Trustor shall have the right under a license granted hereby to Trustor from Beneficiary to enjoy and exercise all rights, remedies, benefits and privileges with respect to the Development Collateral Documents subject to the terms and conditions of this Article 3 and the other Loan Documents.

3.6 **Development Collateral Remedies.** If an Event of Default has occurred and is then existing, in addition to, and without limitation of, the remedies provided for elsewhere herein, Beneficiary shall have the right upon ten (10) business days' notice to Trustor (and if such Event of Default is not cured), to: (a) revoke the license granted to Trustor pursuant to Section 3.5 hereof for so long as any uncured Event of Default exists; (b) exercise all of the rights, remedies, privileges and benefits of Trustor under and with respect to any of the Development Collateral, including the right to pay and perform Trustor's obligations thereunder in such manner and to such extent as Beneficiary may deem appropriate or necessary to protect the Project and its Development Collateral, including, without limiting the generality of the foregoing, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary hereunder, under any other Loan Documents, at law or in equity; (c) terminate any contracts or agreements of Trustor as Beneficiary determines necessary without any liability to Beneficiary; (d) employ and pay third party consultants and/or counsel and pay such costs and expenses in connection therewith; (e) prohibit Trustor, including as a declarant under any CC&Rs, from taking any action or exercising any rights with respect to any Development Collateral, including without limitation, any CC&Rs, and otherwise take such actions as Beneficiary may deem appropriate with respect to such Development Collateral, including without limitation, any CC&Rs; and (f) take any other action or incur any other cost as Beneficiary deems appropriate with respect to the Development Collateral. Any sums expended by Beneficiary pursuant to this Section shall be deemed a Protective Advance under the Loan Documents and Trustor shall promptly pay to Beneficiary within thirty (30) days after receipt of demand therefor, all such sums, together with interest thereon at the then-applicable Interest Rate if such sum is not paid within thirty (30) days after demand; provided that if such payment is not made within thirty (30) days

of written demand therefor, interest thereon shall accrue at the Default Rate set forth in the Loan Documents from the date paid or incurred by Beneficiary or any Lender. Notwithstanding anything to the contrary set forth elsewhere herein or in any other Loan Document, nothing contained herein shall obligate Beneficiary or any Lender to take any such action or exercise any such remedy and no such action or exercise (or the failure to act or exercise) by Beneficiary or Lenders shall reduce or otherwise release Trustor's liability with respect to any obligation of Trustor arising out of or related to the Development Collateral or with respect to Trustor's Obligations.

ARTICLE 4
SECURITY AGREEMENT; FIXTURE FILING

4.1 **Creation of Security Interest.** Trustor hereby grants and assigns to Beneficiary a security interest in and to all of Trustor's right, title and interest in and to the Personal Property including without limitation any Account (as defined below) to secure the payment and performance of the Obligations.

4.2 **Representations, Warranties and Covenants of Trustor.** Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of the Obligations of Trustor to Beneficiary and any extension of credit thereunder) as follows:

(a) The Personal Property is not used or bought for personal, family or household purposes;

(b) The tangible portion of the Personal Property will be kept on or at the Property, the Improvements, or at Trustor's office, as applicable, and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are damaged, obsolete, consumed or worn out, all of which shall be promptly replaced by Trustor with similar items of equal or greater value;

(c) At the request of Beneficiary, Trustor will join Beneficiary in executing one or more Financing Statements and fixture filings pursuant to Applicable Law, including the Commercial Code, each in form reasonably satisfactory to Beneficiary and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable. Any reference to any Section of the Commercial Code shall mean that section as such section may be amended, revised or replaced by another or additional section;

(d) Trustor represents and warrants as of the date hereof that (i) Trustor is a limited liability company, duly organized under the laws of the State of Delaware and authorized to do business in the State of Utah, (ii) Trustor's principal place of business is at Trustor's address first set forth above, and (iii) Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Except as otherwise permitted pursuant to the terms of this Deed of Trust or any other Loan Document, Trustor will at all times continue as a limited liability company duly organized under the laws of the State of Delaware, authorized to do business in the State of Utah and will not, without the prior written consent of Beneficiary, change its principal place of business or adopt or change any trade name or fictitious business name and Trustor will, upon request of Beneficiary, execute any additional Financing Statements or other certificates necessary to reflect the adoption or change in trade name or fictitious business name;

(e) Trustor shall not, without Beneficiary's prior written consent, further Transfer any security interest in any of Trustor's or the Project's deposit accounts (individually, an "Account" and collectively, the "Accounts"), or permit any lien to attach thereto, except as may be created in favor of Beneficiary in connection with the Loan;

(f) Trustor shall immediately notify Beneficiary of any claim against the Personal Property including without limitation any Account (or the funds therein), which is adverse to the interest of Beneficiary;

(g) Trustor represents and warrants as of the date hereof that Trustor owns the Personal Property including without limitation any Account (and the funds therein) free and clear of any and all liens, encumbrances, or interests of any third parties other than the security interest of Beneficiary and other liens approved by Beneficiary in writing, and Trustor further covenants that it will keep the Personal Property including without limitation all Accounts free of all liens and claims of any kind or nature, whether voluntary or involuntary, except the security interest of Beneficiary and other liens approved by Beneficiary in writing;

(h) Trustor shall, at Trustor's expense, take all actions necessary or advisable from time to time to maintain the first priority and perfection of said security interest and shall not take any actions that would alter, impair or eliminate said priority or perfection;

(i) Upon Beneficiary's request, Trustor shall deliver to Beneficiary any original certificate evidencing any part of any Account, duly endorsed over to Beneficiary as necessary; and

(j) In the event any Account shall be an interest bearing account, then (i) such interest shall constitute part of the pledged Collateral hereunder, (ii) Beneficiary shall have no liability with respect to the accrual of such interest, including the amount of such accrual or the lack of any such accrual and (iii) any and all such accrued interest shall be taxable to Trustor, and Beneficiary shall have no liability with respect thereto.

4.3 **Use of Personal Property by Trustor.** So long as no Event of Default has occurred and is continuing hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

4.4 **Access to Account.** Except as expressly set forth to the contrary in the Loan Documents (including, without limitation, any deposit account control agreement), so long as no Event of Default has occurred and is continuing hereunder or under any other Loan Document, Trustor shall have access to any Account and funds therein.

4.5 **Authorization to File.** Beneficiary is hereby authorized to prepare, record or file with the jurisdiction(s) Beneficiary deems appropriate, initial Financing Statements and any amendments related thereto, any copyright mortgages and assignments, in each case, covering the Collateral in which Beneficiary has been granted a security interest or other lien pursuant to this Deed of Trust and any of the other Loan Documents. This provision constitutes an authenticated record contemplated by Section 9509(a) of the Commercial Code.

4.6 **Remedies Upon an Event of Default - Personal Property.**

(a) In addition to, and without limitation of, the remedies provided for elsewhere herein, upon the occurrence and during the existence of an Event of Default hereunder, Beneficiary may, at its option, upon ten (10) business days' notice to Trustor and if such Event of Default is not cured, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others

claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including paying, purchasing, contesting or compromising any lien, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and deliver promptly such Personal Property to Beneficiary, or an agent or representative designated by Beneficiary. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's Property to exercise Beneficiary's rights hereunder, subject to the rights of unrelated, third party tenants under Leases;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by Applicable Law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Commercial Code, including Section 9604, or any other Applicable Law.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth on the first page above.

(c) The proceeds of any sale under Section 4.6(a)(vi) shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including costs of litigation and reasonable attorneys' fees) and the discharge of all impositions, liens and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any impositions or liens subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Beneficiary shall determine; and

(iii) The surplus, if any, shall be paid to Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

4.7 **Remedies Upon an Event of Default - Account.** In addition to, and without limitation of, the remedies provided for elsewhere herein, upon the occurrence and during the continuance of an Event of Default hereunder, in addition to and without limitation of the rights and remedies of Beneficiary under the Master Loan Agreement and any other Loan Document, and only upon ten (10) business days' notice to Trustor and if such Event of Default is not cured:

(a) Trustor shall have no further rights or access to any Account or any funds therein, including the right to withdraw funds therefrom, whether for the payment of any of the Project's operating expenses, repairs, capital expenditures, renovation costs, construction costs or otherwise; and

(b) Beneficiary may, to the maximum extent permitted by Law, any Loan Document or any deposit account control agreement, apply any sums then present in any Account to the payment of the Loan in any order or priority as determined by Beneficiary.

No disbursements made from any Account during the existence of an uncured Event of Default shall be deemed a waiver or cure thereof, create any right of Trustor to the distribution or use of the remainder of the funds in such Account (or any portion thereof) and none of Beneficiary's rights and remedies shall be prejudiced in any manner thereby.

4.8 **Security Agreement.** This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes and Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the Commercial Code.

4.9 **Fixture Filing.** Trustor hereby further grants and assigns to Beneficiary, a security interest in and to all of Trustor's right, title and interest in and to all "**fixtures**" (as that term is defined in the Commercial Code, including Section 9-102(A)(41)) located at, on or within the Property to secure the payment and performance of the Obligations. Upon its recording in the real property records, this Deed of Trust shall be effective as a Financing Statement filed as a fixture filing. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust or any Financing Statement relating hereto shall be sufficient for filing or recording as a Financing Statement. The filing of, or the failure to file, any other Financing Statement relating to any Personal Property, rights or interests described herein shall not be construed to diminish any right or priority hereunder. In order to give effect to this provision:

(a) The name of the "Debtor" and its mailing address are both that of Trustor, all as set forth on the first page of this Deed of Trust in the introductory paragraph;

(b) The address of the secured party from which information concerning the security interest may be obtained is that of Beneficiary as set forth on the first page of this Deed of Trust in the introductory paragraph;

(c) The types and items of Collateral are as described in this Deed of Trust; and

(d) Certain items of Collateral constitute fixtures and this Deed of Trust contains a description of the applicable real estate.

ARTICLE 5
EVENT OF DEFAULT; REMEDIES UPON EVENT OF DEFAULT

5.1 **Events of Default.** Without limitation of any other provision contained herein, any “Event of Default” as that term is defined in the Master Loan Agreement shall constitute an event of default (“**Event of Default**”) hereunder.

5.2 **Remedies.** At any time an Event of Default has occurred and is continuing, in addition to and without limitation of the exercise of any or all of the rights and remedies of Beneficiary under this Deed of Trust (including Section 2, Section 3.6, Section 4.6 and Section 4.7), in the Master Loan Agreement, in any other Loan Document, at law or in equity, Beneficiary may exercise, to the fullest extent permitted by Applicable Law any and all of the following rights and remedies upon ten (10) business days’ notice to Trustor and if such Event of Default is not cured:

(a) **Acceleration.** Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind; provided that, to the extent Trustor is subject to any Debtor Relief Law that precludes, enjoins or otherwise acts as a stay against Beneficiary making such declaration of acceleration, such acceleration shall be deemed to have automatically occurred without any declaration or other action by Beneficiary being required;

(b) **Judicial Foreclosure.** Beneficiary may commence and prosecute to completion an action to judicially foreclose the lien of this Deed of Trust as a mortgage in accordance with all Applicable Laws;

(c) **Non-Judicial Foreclosure.** Beneficiary may elect to exercise the power of sale herein contained by delivering to Trustee a written statement of breach, notice of default and election to cause Trustor’s interest in the Trust Estate to be sold and depositing with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require and Trustee shall foreclose this Deed of Trust in accordance with Applicable Laws in Utah relating to foreclosure sales under power of sale:

(i) Upon receipt of such statement and notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such notice of sale as then required by Applicable Law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by Applicable Law and after recordation of such notice of sale and notice of sale having been given as required by Applicable Law, sell the Trust Estate at the time and place of sale fixed by it in said notice of sale, either as a whole, or in separate lots or parcels or items as Trustee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee may require the successful bidder at any sale to deposit immediately with Trustee cash or certified check in an amount up to ten percent (10%) of the bid. The bid may be rejected if the deposit is not immediately made. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. Any Person, including Trustor, Trustee or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(ii) After deducting all costs, fees and expenses of Trustee and of this Trust, including Trustee’s fees and reasonable attorneys’ fees, and costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (A) first, all sums expended under the terms of the Loan Documents, not then repaid, with accrued interest at the Default Rate; (B) second, all other sums due under the Loan Documents; (C) third, all other

sums, then secured hereby; and (D) fourth, the remainder, if any, to the Person or Persons legally entitled thereto under Applicable Law.

(iii) To the fullest extent permitted by Applicable Law, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale; however, Trustee must provide notice to Trustor of such sale at the time fixed by the last postponement.

(d) Entry and Possession; Protection of the Trust Estate. Beneficiary may, without regard to the adequacy of its security, and with or without bringing any action or proceeding, either in person, by agent or by a court appointed receiver: (i) enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustor, subject to the rights of, third party tenants under Leases; (ii) do any acts that it deems necessary or desirable to (A) preserve the value, marketability or rentability of the Trust Estate (or any portion thereof or interest therein), (B) increase the income from the Trust Estate (or any portion thereof or interest therein), (C) commence or otherwise complete the renovation or construction of any Improvements and to pay, settle or compromise all existing bills and claims which are or may become liens against the Trust Estate (or any portion thereof) or may be necessary or desirable for such completion or preservation or protection of the Trust Estate (or any portion thereof), (D) prosecute, defend or otherwise settle all actions, proceedings and claims with respect to the Trust Estate (or any portion thereof), (E) take such action and require such performance as it deems necessary under any bonds or insurance policies furnished hereunder, and (F) otherwise protect and preserve the Trust Estate (or any portion thereof or interest therein), including to make additions, alterations, repairs and improvements to the Trust Estate that Beneficiary may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (iii) as further described in Article 2 above, sue for or otherwise collect the Rents, or any part thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including reasonable attorneys' fees) upon the Obligations, all in such order as Beneficiary may determine; and (iv) exercise such other rights and remedies under this Deed of Trust, as Beneficiary may elect, including contract and development rights. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law during the existence of any uncured Event of Default;

(e) Power of Attorney. Trustor hereby constitutes and appoints Beneficiary, or independent contractors selected by Beneficiary, effective at any time an Event of Default has occurred and is continuing, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of acting with respect to the Trust Estate and performing Trustor's Obligations under this Deed of Trust, the Master Loan Agreement and the other Loan Documents, in the name of Trustor (or Borrower, as applicable), and hereby empowers said attorney-in-fact to carry out the purposes of this Section 5.2. Trustor shall, promptly upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses actually incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and reasonable attorneys' fees) together with interest thereon at the then-applicable Interest Rate; provided that if such payment is not made within thirty (30) days of written demand therefor, interest thereon shall accrue at the Default Rate set forth in the Loan Documents from the date paid or incurred by Beneficiary. It is understood and agreed that the foregoing power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until repayment of the Loan. Trustor acknowledges that Beneficiary may (but is not obligated

to) exercise any of the foregoing powers. All sums expended by Beneficiary for the foregoing purposes, or in the exercise of the foregoing rights and remedies (including reasonable attorneys' fees and costs), shall be deemed to have been disbursed to and borrowed by Trustor and shall be evidenced and secured by the Loan Documents and other Development Collateral from time to time securing the Obligations; and

(f) **Appointment of Receiver.** Beneficiary may, as a matter of right, apply to any court having jurisdiction, either on an ex parte basis or on regular notice at the election of Beneficiary, to appoint a receiver or receivers of the Trust Estate. Trustor acknowledges, agrees and admits that the existence of an uncured Event of Default, without any further evidence, constitutes good cause for the appointment of such receiver. Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Trustor further irrevocably acknowledges and agrees that any such receiver or receivers shall have (i) all the usual powers and duties of receivers in like or similar cases and (ii) all the powers and duties of Beneficiary in case of entry as provided herein, including Section 5.2(e). Such powers and duties shall continue until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period unless such receivership is sooner terminated by order of the court.

5.3 **Remedies Not Exclusive.** Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding that some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them shall be entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by Applicable Law, either of them may pursue inconsistent remedies.

5.4 **Request for Notice.** Trustor hereby requests a copy of any notice of default and notice of sale hereunder be mailed to it at the address set forth above on the first page of this Deed of Trust, together with copies to all other listed parties.

ARTICLE 6

MISCELLANEOUS

6.1 **Appointment of Successor Trustee.** Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of Applicable Law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from Trustee's predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

6.2 **Trustee's Powers.** At any time, or from time to time, without liability therefor, but only upon ten (10) business days' notice to Trustor, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any Person for payment of the Obligations or

the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

6.3 **Beneficiary's Powers.** Without affecting the liability of any Person liable for the payment or performance of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any Person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned or (f) make compositions or other arrangements with debtors in relation thereto.

6.4 **Change, Discharge, Termination, or Waiver.** No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary or any Lender in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

6.5 **Actions Affecting Trust Estate.** Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee and shall pay all costs and expenses (including costs of evidence of title, litigation, and reasonable attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear.

6.6 **Trustor - Surety Waiver of Certain Rights.** Trustor waives, to the fullest extent permitted by Applicable Law:

(a) The benefit of all present and future Applicable Laws providing for any appraisal before sale of any portion of the Trust Estate;

(b) all rights of redemption, valuation, stay of execution, notice of election to mature or declare due the Obligations, and marshaling in the event of foreclosure of this Deed of Trust as a mortgage or exercise of the power of sale herein;

(c) all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies, such as a non-judicial foreclosure with respect to security for an obligation, has destroyed any rights of subrogation and reimbursement. Trustor agrees that Beneficiary may designate the portion of the Obligations that is satisfied by any partial payment pursuant to the Loan Documents;

(d) except as expressly provided herein, all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor; and

(e) to the extent not otherwise prohibited by Applicable Law, any and all rights to require marshaling of assets or to require realization on the Trust Estate in a particular order.

6.7 **Intentionally Deleted.**

6.8 **Intentionally Deleted.**

6.9 **No Partial Release.** Except to the extent any partial reconveyances are expressly permitted under the Master Loan Agreement, no Collateral shall be reconveyed or released unless and until the indefeasible payment in full of the Loan and termination of any further commitment to Lenders in any amounts ("**Payment in Full**"). Upon written request of Beneficiary stating that Payment in Full has occurred, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the Person or Persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The grantee in any reconveyance may be described as "the Person or Persons legally entitled thereto."

6.10 **Acceptance by Trustee.** Trustee accepts this Deed of Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

6.11 **No Merger of Lease.** If both the lessor's and lessee's estate under any Lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any Leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any Lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

6.12 **Governing Law; Jurisdiction; Severability.** IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE, CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN CREATED BY THIS DEED OF TRUST AND THE OBLIGATIONS ARISING HEREUNDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR, TRUSTEE AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS DEED OF TRUST, AND THIS DEED OF TRUST WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. IN THE EVENT THAT ANY PROVISION OR CLAUSE OF THIS DEED OF TRUST CONFLICTS WITH APPLICABLE LAWS, SUCH CONFLICTS SHALL NOT AFFECT OTHER PROVISIONS OF THIS DEED OF TRUST WHICH CAN BE GIVEN EFFECT WITHOUT THE CONFLICTING PROVISION, AND TO THIS END, THE PROVISIONS OF THIS DEED OF TRUST ARE DECLARED TO BE SEVERABLE. TRUSTOR, TRUSTEE AND BENEFICIARY CONSENT TO JURISDICTION AND VENUE AS SET FORTH IN THE MASTER LOAN AGREEMENT.

6.13 **Deed of Trust Constitutes a Loan Document.** This Deed of Trust shall constitute a Loan Document and shall be subject to all of the terms and conditions set forth in the Master Loan Agreement, which are applicable to the interpretation, administration and enforcement of the Loan, this Deed of Trust, the other Loan Documents and all of the rights of, benefits to and duties of the parties with respect thereto, including notices, consent to jurisdiction, governing law, waiver of jury trial, judicial reference, waiver of special damages, determinations by Agent (i.e., Beneficiary) or any Lender, and severability provisions, with Beneficiary and Trustor to be entitled to the benefits thereof and bound thereby.

6.14 **Future Advances.** This Deed of Trust is given for the purpose of securing loan advances and other extensions of credit that Beneficiary has made and may make to or for the benefit of Trustor pursuant and subject to the terms and provisions of the Master Loan Agreement and the other Loan Documents. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Deed of Trust shall secure unpaid balances of loan advances, other extensions of credit made after this Deed of Trust is recorded, whether made pursuant to an obligation of Beneficiary or otherwise, and in such event, such advances shall be secured to the same extent as if such future advances were made on the date hereof, although there may be no advance made at the time of execution hereof, although there may be no indebtedness outstanding at the time any advance is made and although such advances may from time to time be repaid to a zero balance and thereafter readvanced. Such loan advances may or may not be evidenced by guarantees or notes executed pursuant to the other Loan Documents.

6.15 **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY LAW, TRUSTOR AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR TO ENFORCE OR DEFEND ANY RIGHT UNDER THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS DEED OF TRUST AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

6.16 **Intentionally Deleted.**

6.17 **Joint and Several.** If this Deed of Trust is signed by more than one person and/or firm and/or corporation, then all of the obligations herein contained shall be considered joint and several obligations of each signer hereof.

6.18 **State-Specific Provisions.** Additional state specific provisions, if any, are outlined on Exhibit "B" attached hereto and incorporated herein. In the event of any inconsistencies between the terms and conditions of Exhibit "B" and any other terms and conditions of this Deed of Trust, the terms of Exhibit "B" shall control and be binding.

[Signature Page Follows]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust under seal as of the day and year set forth in the acknowledgment attached hereto.

TRUSTOR:

CW THE CLUB, LLC,
a Utah limited liability company

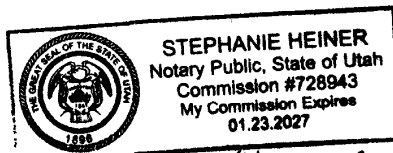
By: COLE WEST ENTITY SERVICES, LLC
Its: Manager

By: COLE WEST, LLC
Its: Manager

By: 
Name: Colin Wright
Its: Manager

State of UTAH)
) ss.
County of DAVIS)

The foregoing instrument was acknowledged before me this 25th day of September, 2025, by COLIN WRIGHT, as Manager of COLE WEST, LLC, the Manager of COLE WEST ENTITY SERVICES, LLC, the Manager of CW THE CLUB, LLC, a Utah limited liability company.



[Seal]

My Commission Expires: 01.23.2027


(Notary Public)

Residing at: Layton, UT

[Signature Page to Deed of Trust (The Club)]

EXHIBIT "A"

LEGAL DESCRIPTION

Proposed THE CLUB AT CORAL CANYON PHASE 1 and Proposed THE CLUB AT CORAL CANYON PHASE 2, being more particularly described as follows:

Section 8, Township 42 South, Range 14 West, Salt Lake Base & Meridian

Phase 1 Developable Area:

Beginning at a point on the West Line of The Island at Coral Canyon Phase 3 Subdivision said point lies North 88°30'15" West along the section line 242.49 feet and South 1,388.58 feet; from the South Quarter Corner of Section 5, Township 42 South, Range 14 West, Salt Lake Base and Meridian; and running thence South 62°08'27" West 101.47 feet; thence South 37°58'07" West 85.18 feet; thence South 36°25'49" West 55.80 feet; thence South 40°26'33" West 67.36 feet; thence South 50°23'57" West 123.08 feet; thence South 62°10'38" West 116.73 feet; thence North 27°46'27" West 125.03 feet; thence westerly along a 475.00 foot radius non-tangent curve to the right, (center point lies North 21°10'06" West) through a central angle of 20°37'09", a distance of 170.94 feet; thence southwesterly along a 175.00 foot radius reverse curve to the left, (center point lies South 00°32'57" East) through a central angle of 86°53'04'', a distance of 265.37 feet; thence southwesterly along a 175.00 foot radius reverse curve to the right, (center point lies North 87°26'01" West) through a central angle of 59°17'49'', a distance of 181.11 feet; thence southwesterly along a 175.00 foot radius reverse curve to the left, (center point lies South 28°08'12" East) through a central angle of 34°56'12", a distance of 106.71 feet; thence southwesterly along a 525.00 foot radius reverse curve to the right, (center point lies North 63°04'24" West) through a central angle of 17°45'28", a distance of 162.71 feet; thence southerly along a 15.00 foot radius reverse curve to the left, (center point lies South 45°18'56" East) through a central angle of 51°47'16'', a distance of 13.56 feet; thence southwesterly along a 54.50 foot radius reverse curve to the right, (center point lies South 82°53'47" West) through a central angle of 91°27'18", a distance of 86.99 feet; thence South 29°59'53" West 71.00 feet; thence West 150.51 feet; thence North 04°39'18" East 681.62 feet; thence South 85°20'42" East 29.06 feet; thence North 35°15'22" East 75.02 feet; thence North 56°58'21" East 111.58 feet; thence North 66°12'54" East 49.03 feet; thence southeasterly along a 175.00 foot radius non-tangent curve to the left, (center point lies North 55°33'59" East) through a central angle of 18°34'55", a distance of 56.76 feet; thence southeasterly along a 475.00 foot radius reverse curve to the right, (center point lies South 36°59'05" West) through a central angle of 10°11'08", a distance of 84.44 feet; thence North 47°10'13" East 50.00 feet; thence North 65°43'42" East 85.00 feet; thence North 74°27'45" East 99.01 feet; thence North 77°25'54" East 103.90 feet; thence North 67°54'57" East 103.76 feet; thence North 59°30'59" East 104.33 feet; thence North 54°19'37" East 30.17 feet; thence North 43°49'23" East 101.71 feet; thence North 52°33'18" East 99.93 feet; thence North 56°01'24" East 104.54 feet; thence North 54°00'10" East 104.40 feet; thence South 86°44'49" East 10.98 feet; thence North 51°34'59" East 201.80 feet; thence North 38°25'01" West 131.56 feet; thence North 44°01'09" East 57.56 feet; thence North 56°17'10" West 50.44 feet; thence North 48°21'54" West 135.00 feet; thence North 32°44'50" East 89.33 feet; thence North 57°15'10" West 134.20 feet; thence North 11°18'45" West 262.40 feet; thence North 73°47'29" East 205.44 feet; thence North 57°30'57" East 386.81 feet; thence South 62°11'59" East 31.31 feet; thence South 15°07'49" East 72.28 feet; thence South 48°05'37" East 125.18 feet; thence South 20°49'09" West 363.15 feet; thence South 00°23'34" West 421.63 feet; thence South 18°49'22" West 157.24 feet; to the Northern most point of The Island at Coral Canyon Phase 2 Subdivision as on file with the Washington County Recorder's office running along said North line of The Island of Coral Canyon Phase 2 the following six (6) courses: 1) North 76°02'18" West 57.06 feet, 2) South 49°22'07" West 110.74 feet, 3) South 37°05'51" East 8.19 feet, 4) South 53°20'59" West 50.00 feet, 5) South 49°16'59" West 138.58 feet and 6) South 24°42'42" East 84.75 feet to the **point of beginning**.

Phase 2 Developable Area:

Beginning at a point that lies North 88°30'15" West along the section line 362.93 feet; and due South a distance of 721.85 feet; from the South Quarter Corner of Section 5, Township 42 South, Range 14 West, Salt Lake Base and Meridian; and running thence South 48°21'54" East 135.00 feet; thence South 56°17'10" East 50.44 feet; thence South 44°01'09" West 57.56 feet; thence South 38°25'01" East 131.56 feet; thence South 51°34'59" West 201.80 feet; thence North 86°44'49" West 10.98 feet; thence South 54°00'10" West 104.40 feet; thence South 56°01'24" West 104.54 feet; thence South 52°33'18" West 99.93 feet; thence South 43°49'23" West 101.71 feet; thence South 54°19'37" West 30.17 feet; thence South 59°30'59" West 104.33 feet; thence South 67°54'57" West 103.76 feet; thence South 77°25'54" West 103.90 feet; thence South 74°27'45" West 99.01 feet; thence South 65°43'42" West 85.00 feet; thence South 47°10'13" West 50.00 feet; thence northwesterly along a 475.00 foot radius non-tangent curve to the left, (center point lies South 47°10'13" West) through a central angle of 10°11'08", a distance of 84.44 feet; thence northwesterly along a 175.00 foot radius reverse curve to the right, (center point lies North 36°59'05" East) through a central angle of 18°34'55'', a distance of 56.76 feet; thence South 66°12'54" West 49.03 feet; thence South 56°58'21" West 111.58 feet; thence South 35°15'22" West 75.02 feet; thence North 85°20'42" West 29.06 feet; thence North 04°39'18" East 617.88 feet; thence South 85°54'46" East 74.75 feet; thence South 25°23'19" East 168.75 feet; thence southeasterly along a 54.50 foot radius non-tangent curve to the right, (center point lies South 22°57'49" East) through a central angle of 126°10'48", a distance of 120.02 feet; thence North 73°56'24" East 91.61 feet; thence North 73°28'26" East 107.58 feet; thence North 68°59'03" East 100.50 feet; thence North 63°40'31" East 100.50 feet; thence North 58°22'00" East 100.50 feet; thence North 53°11'49" East 100.00 feet; thence North 51°34'59" East 105.48 feet; thence North 51°34'59" East 105.48 feet; thence North 51°34'59" East 105.48 feet; thence North 48°48'02" East 105.31 feet; to the **point of beginning**.

Phase 1 Open Space Non-Developable Area:

Beginning at a point on the West Line of The Island at Coral Canyon Phase 3 Subdivision as on file with the Washington County Recorder's Office said point lies North 88°30'15" West along the section line 242.49 feet; and South 1,388.58 feet; from the South Quarter Corner of Section 5, Township 42 South, Range 15 West, Salt Lake Base and Meridian; and running Along said West Line of The Island at Coral Canyon Phase 3 Subdivision the following five (5) courses: 1) South 24°42'42" East 1.16 feet, 2) South 17°40'47" West 32.78 feet, 3) South 50°16'44" West 126.58 feet, 4) South 35°20'32" West 440.05 feet and 5) South 41°41'49" West 270.24 feet; to the most northwest corner of The Island at Coral Canyon Phase 1 Subdivision as on file with the Washington County Recorder's Office running along said West Line of The Island at Coral Canyon Phase 1 Subdivision the following four (4) courses: 1) South 41°41'45" West 121.99 feet, 2) South 24°29'14" West 75.79 feet, 3) South 40°34'41" West 107.86 feet, and 4) South 27°58'11" East 143.25 feet; thence South 62°07'59" West 699.36 feet; thence North 59°04'46" West 85.13 feet; thence North 04°39'18" East 406.83 feet; thence East 150.51 feet; thence North 29°59'53" East 71.00 feet; thence northeasterly along a 54.50 foot radius non-tangent curve to the left, (center point lies North 05°38'55" West) through a central angle of 91°27'18", a distance of 86.99 feet; thence northerly along a 15.00 foot radius reverse curve to the right, (center point lies North 82°53'47" East) through a central angle of 51°47'16'', a distance of 13.56 feet; thence northeasterly along a 525.00 foot radius reverse curve to the left, (center point lies North 45°18'56" West) through a central angle of 17°45'28'', a distance of 162.71 feet; thence northeasterly along a 175.00 foot radius reverse curve to the right, (center point lies South 63°04'24" East) through a central angle of 34°56'12'', a distance of 106.71 feet; thence northeasterly along a 175.00 foot radius reverse curve to the left, (center point lies North 28°08'12" West) through a central angle of 59°17'49'', a distance of 181.11 feet; thence northeasterly along a 175.00 foot radius reverse curve to the right, (center point lies South 87°26'01" East) through a central angle of 86°53'04'', a distance of 265.37 feet; thence easterly along a 475.00 foot radius reverse curve to the left, (center point lies North 00°32'57" West) through a central angle of 20°37'09'', a distance of 170.94 feet; thence South 27°46'27" East 125.03 feet; thence North 62°10'38" East

116.73 feet; thence North 50°23'57" East 123.08 feet; thence North 40°26'33" East 67.36 feet; thence North 36°25'49" East 55.80 feet; thence North 37°58'07" East 85.18 feet; thence North 62°08'27" East 101.47 feet to the **point of beginning**.

Phase 2 Open Space Non-Developable Area:

Beginning at a point that lies North 88°30'15" West along the section line 362.93 feet; and due South 721.85 feet; from the South Quarter Corner of Section 5, Township 42 South, Range 14 West, Salt Lake Base and Meridian; and running thence South 48°48'02" West 105.31 feet; thence South 51°34'59" West 316.44 feet; thence South 53°11'49" West 100.00 feet; thence South 58°22'00" West 100.50 feet; thence South 63°40'31" West 100.50 feet; thence South 68°59'03" West 100.50 feet; thence South 73°28'26" West 107.58 feet; thence South 73°56'24" West 91.61 feet; thence northwesterly along a 54.50 foot radius non-tangent curve to the left, (center point lies North 76°47'01" West) through a central angle of 126°10'48", a distance of 120.02 feet; thence North 25°23'19" West 168.75 feet; thence North 85°54'46" West 74.75 feet; thence North 27°01'09" East 196.16 feet; thence North 62°41'56" East 338.55 feet; thence North 50°50'11" East 492.98 feet; thence North 73°47'29" East 209.21 feet; thence South 11°18'45" East 262.40 feet; thence South 57°15'10" East 134.20 feet; thence South 32°44'50" West 89.33 feet to the **point of beginning**.

Additional Open Space Non-Developable Area:

Beginning at a point on the southerly line of Parcel W-4-2-5-231-CC said point lies South 88°14'54" East 72.47 feet along the Section Line, and South 54.65 feet, from the South Quarter Corner of Section 5, Township 42 South, Range 14 West, Salt Lake Base and Meridian; Running thence South 62°11'59" East along said Southerly Line 160.42 feet; thence South 20°49'09" West Along Said Southerly Line 84.05 feet; thence North 48°05'37" West 125.18 feet; thence North 15°07'49" West 72.28 feet to the **point of beginning**.

EXHIBIT "B"

STATE SPECIFIC PROVISIONS

- B-1. Default Interest, Late Charges, Etc. For purposes of Utah Code Annotated § 57-1-28, Trustor agrees that (i) all default interest, late charges, any prepayment premiums, swap breakage fees and similar amounts, if any, owing from time to time under the Note or other Loan Documents shall constitute a part of and be entitled to the benefits of Beneficiary's lien upon the Project, and (ii) Beneficiary may add all default interest, late charges, prepayment premiums, swap breakage fees and similar amounts owing from time to time to the principal balance of the Note in accordance with the Master Loan Agreement, and in either case Beneficiary may include all such amounts in any credit which lender may make against its bid at a foreclosure sale of the Project pursuant to this Deed of Trust.
- B-2. Assignment of Rents. Article 2 hereof is subject to the Utah Uniform Assignment of Rents Act, Utah Code Annotated, § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of Article 2 and the provisions of the Utah Act, the provisions of the Utah Act shall control and Beneficiary shall have all rights and remedies available under the Utah Act which rights and remedies shall be cumulative with all rights and remedies hereunder.
- B-3. Utah Construction Registry.
- (a) Subject to Trustor's contest rights set forth in this Deed of Trust or the other Loan Documents, Trustor will pay prior to delinquency all bills for labor and materials incurred in connection with the Project and to prevent the fixing of any lien against any part of the Project, even if it is inferior to this Deed of Trust, for any such bill which may be legally due and payable. Upon Beneficiary's request, Borrower agrees to furnish due proof of such payment to Lender after payment and before delinquency.
- (b) Trustor shall timely comply with all requirements of Title 38 Chapter 1a of Utah Code Annotated with regard to filings and notices. Trustor shall cause Beneficiary to be named as a person interested in receiving electronic notices of all filings with respect to the Project in the State Construction Registry in accordance with Utah Code Annotated § 38-1a-201.
- (c) Trustor represents and warrants to Beneficiary that it has inspected the records of the State Construction Registry and that such inspection reveals no current filings of a preliminary notice or notice of retention filed by any lien claimant (whether a pre-construction lien or a construction lien) except as disclosed to Beneficiary by Trustor in writing or for which the Beneficiary's title insurer has provided affirmative coverage acceptable to Beneficiary. Trustor further represents and warrants that no mechanic's lien claim, notice of lien, lis pendens or similar filing has been filed in the State Construction Registry in any form prior to the date hereof with respect to the Project or recorded against the Project.
- (d) If Beneficiary or its title insurer determines that a notice of lien has been filed in the State Construction Registry prior to the time of the recording of this Deed of Trust, Trustor shall provide to Beneficiary written evidence acceptable to Beneficiary and its title insurer that the lien claimant has accepted payment in full for construction services that the claimant furnished pursuant to Utah Code Annotated § 38-1a-503(2)(b) such that the priority for any pre-construction services lien or a construction services lien dates immediately after the recording of this Deed of Trust.

(e) Trustor shall cooperate with Beneficiary and any title insurer to facilitate the filing of a Notice of Construction Loan, as contemplated by Utah Code Annotated § 38-1a-601 in the State Construction Registry with respect to the financing secured hereby. The notice of construction loan will include the following information: Beneficiary's name, address and telephone number, Trustor's full legal name, the tax parcel identification number for each parcel included in the Project secured hereby, the address of the Project, and the county in which the Project is located.

(f) Trustor shall cause, as a condition precedent to the closing of the loan secured hereby, Beneficiary's title insurer to insure in a manner acceptable to Beneficiary in its sole discretion, that this Deed of Trust shall be a valid and existing first priority lien on the Project free and clear of any and all exceptions for mechanic's and materialman's liens and all other liens and exceptions except as set forth in the mortgagee's policy of title insurance accepted by Beneficiary, and such title insurance policy may not contain an exception for broken lien priority and may not include any pending disbursement endorsement, or any similar limitation or coverage or requiring future endorsements to increase mechanic lien coverage under Covered Risk 11(a) of the 2006 Form of ALTA Mortgagee's Title Insurance Policy.

(g) Trustor shall pay and promptly discharge prior to delinquency, at Trustor's cost and expense, all liens, encumbrances and charges upon the Project not permitted by the Loan Documents, or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings now being erected or that hereafter may be erected on the Project regardless of by whom such services, labor or materials may have been contracted, provided, however, that Trustor shall have the right to contest any such claim or lien so long as Trustor previously records a notice of release of lien and substitution of alternate security as contemplated by Utah Code Annotated § 38-1a-804 and otherwise complies with the requirements of Utah Code Annotated § 38-1a-804 to release the Project from such lien or claim. Notwithstanding the foregoing, Trustor may (A) with the prior written consent of Beneficiary, contest the amount of any such lien or claim related to services, labor or materials in accordance with Utah Code Annotated § 38-1a-804(7) without previously recording a notice of release of lien and substitution of alternate security or (B) appropriately bond or reserve (in cash deposited with Beneficiary) for any such lien or claim, as determined in Beneficiary's reasonable discretion.

(h) If Trustor shall fail to remove and discharge any such lien, encumbrance or charge prior to delinquency, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Project from the effect of such lien, encumbrance or charge by obtaining a bond in the name of and for the account Trustor of and recording a notice of release of lien and substitution of alternate security in the name of Trustor, each as contemplated by Utah Code Annotated § 38-1a-804 or other applicable law, or otherwise by giving security for such claim. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the default rate set forth in the Note.

- B-4. Personal Project. It is the express understanding and intent of the parties that as to any personal Project interests subject to Chapter 9a of the Uniform Commercial Code in effect in the State of Utah (the “UCC”), Beneficiary, upon an Event of Default, may proceed under the UCC or may proceed as to both real and personal Project interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real Project, and treat both real and personal Project interests as one parcel or package of security as permitted by Utah Code Annotated § 70A-9a-601 or other applicable law, and further may sell any shares of corporate stock evidencing water rights in accordance with Utah Code Annotated § 57-1-30 or other applicable law.
- B-5. Deficiency. Trustor agrees to pay any deficiency, arising from any cause, to which Beneficiary may be entitled after applications of the proceeds of any sale, and Beneficiary may commence suit to collect such deficiency in accordance with Utah Code Annotated § 57-1-32 or other applicable law. To the extent Utah Code Annotated § 57-1-32, as now existing or hereafter amended, or any other statute requires that the “fair market value” or “fair value” of the Project be determined as of the foreclosure date in order to enforce a deficiency against Trustor or any other party liable for repayment of the Debt, the term “fair market value” or “fair value” shall include those matters required by law and the additional factors set forth below: (i) the Project shall be valued “as is” and “with all faults” and there shall be no assumption of restoration or refurbishment of Improvements, if any, after the date of the foreclosure; (ii) an offset to the fair market value or fair value of the Project, as determined hereunder, shall be made by deducting from such value the reasonable estimated closing costs related to the sale of the Project, including, but not limited to, brokerage commissions, title policy expenses, tax pro-rations, escrow fees, and other common charges that are incurred by the seller of real Project; and (iii) Trustor shall pay the costs of any appraisals and other expenses incurred in connection with any such determination of fair market value or fair value.
- B-6. Reinstatement. If Trustor, Trustor’s successor in interest, or any other person having a subordinate lien or encumbrance of record on the Project, 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 Annotated § 57-1-31(1), such party shall pay to Beneficiary the reasonable cancellation fee contemplated by Utah Code Annotated § 57-1-31(2), as delivered by Beneficiary, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending sale. Furthermore, in addition to any Trustor payment obligations under this Deed of Trust, Trustor shall pay all costs, fees and expenses incurred by Trustee and Trustee’s agents and counsel for accountings and reinstatement quotes as may be required by Utah Code Annotated § 57-1-31.5 and all such costs, fees and expenses shall be secured by this Deed of Trust.
- B-7. Notice. Beneficiary hereby requests, pursuant to Utah Code Annotated § 57-1-26(3), a copy of any notice of default and that any notice of sale under any Deed of Trust or mortgage affecting the Project be mailed to it at the address set forth in the preamble hereto.
- B-8. Project Status. Trustor represents and warrants to Beneficiary that (a) the Project is not used principally for agricultural purposes, and (b) the loan secured by this Deed of Trust was not made primarily for personal, family or household purposes.
- B-9. Foreclosure; Lawsuits. Upon an Event of Default, Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose (or cause the Trustee to foreclose) the lien hereof upon the Project or any part thereof, for the Obligations, or any part thereof, by any proceedings appropriate under applicable law. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Project at any foreclosure or other sale hereunder, and the amount of Beneficiary’s successful bid may be credited against the Obligations in accordance with Utah

Code Annotated § 57-1-28(1)(b) or other applicable law. Beneficiary, upon so acquiring the Project or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right to appoint a receiver upon an Event of Default, Trustee (at Beneficiary's request) or Beneficiary may also, at any time after the filing of a complaint to foreclose this Deed of Trust, request appointment of a receiver of the Project by the court in which such complaint is filed, and Trustor hereby consents to such appointment. Without limiting the foregoing:

(a) Beneficiary and Trustee, if and as directed by Beneficiary, may commence an action to foreclose the lien of this Deed of Trust as a mortgage in accordance with Beneficiary's rights under Utah Code Annotated § 57-1-23, or other applicable law, appoint a receiver as more particularly described in Subsection 7.3.3, or the Utah Uniform Commercial Real Estate Receivership Act, or elsewhere herein, or specifically enforce any of the covenants hereof.

(b) Beneficiary may exercise the power of sale herein contained and deliver to Trustee a written statement of default or breach and cause Trustee to execute and record a notice of default and election to cause Trustor's interest in the Project to be sold in accordance with Utah Code Annotated § 57-1-24 or other applicable law. After the lapse of such time as may then be required by Utah Code Annotated § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by Utah Code Annotated §§ 57-1-25 and 57-1-26 or other applicable law, Trustee, without demand on Trustor, shall sell the Project on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine (but subject to Trustor's statutory right under Utah Code Annotated § 57-1-27 to direct the order in which the Project, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale (subject to Beneficiary's (or its nominee's) right to make a credit bid as set forth herein or pursuant to applicable law). The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, however, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by Utah Code Annotated § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with Utah Code Annotated § 57-1-28, conveying the Project so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

- B-10. Amendments to Utah Code Annotated. In the event of any amendment to the provisions of Utah Code Annotated Title 57 or other provisions of Utah Code Annotated 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 deemed amendments hereto if permitted by applicable law.
- B-11. Obligations of Environmental Indemnity. Notwithstanding anything to the contrary set forth herein or any of the Loan Documents, this Deed of Trust shall not secure the obligations evidenced by or arising under any environmental indemnity made by Trustor or any guarantor with respect to the Project.

- B-12. Additional Waivers. Trustor knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Trustor under Utah Code Annotated § 78B-6-901 (formerly Utah Code Annotated § 78-37-1) and Utah Code Annotated § 57-1-32 and any successor or replacement statute or any similar laws or benefits.
- B-13. ORAL AGREEMENTS. PURSUANT TO UTAH CODE ANNOTATED SECTION 25-5-4, TRUSTOR IS HEREBY NOTIFIED THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
- B-14. Receiver. In addition to any other rights provided for in this Deed of Trust, Beneficiary may appoint a receiver as and when provided in the Utah Uniform Commercial Real Estate Receivership Act, Utah Code Annotated § 78B-21-101 et seq.