



\*W2984029\*

E# 2984029 PG 1 OF 27  
Leann H. Kilts, WEBER COUNTY RECORDER  
04-Jun-19 0322 PM FEE \$40.00 DEP DAC  
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

WHEN RECORDED MAIL TO:

Bell Rock Income Fund 1, LLC  
6628 E Baseline Road, Suite 101  
Mesa, AZ 85206

110630 - JMP

Space above for County Recorder's Use  
Tax Serial No. 14-027-0007

**DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(FIRST LIEN POSITION)**

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE TRUST ESTATE IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE RECORD OWNER OF THE PROPERTY.

**THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Deed of Trust") is made this 4<sup>th</sup> day of **June, 2019**, and is given by **BM3, LLC**, a Delaware Limited Liability Company, whose address is 2441 S 1560 W, Woods Cross, UT 84087 herein called "**Trustor**," to J. MARTIN TATE, attorney licensed with the Utah State Bar, whose address is 299 South Main Street, Suite 1300, Salt Lake City, Utah, 84111, herein called "**Trustee**," for the benefit of **BELL ROCK INCOME FUND 1, LLC**, a Delaware limited liability company, whose address is 6628 E Baseline Road, Ste 101, Mesa, AZ 85206, as beneficiary and lender, together with its successors and assignees, the "**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, conveys and assigns to Trustee, IN TRUST, WITH FULL POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, all of Trustor's right, title and interest, whether fee, leasehold or otherwise, in and to that certain real property located in Weber County, Utah, and more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Property**").

TOGETHER WITH all right, title, or interest of Trustor in any and all buildings and other improvements now or hereafter erected on the Property including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (collectively, the "**Improvements**"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all rents, sub-rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Property and all units related thereto and the Improvements (collectively, the "**Rents**"), subject to the terms and provisions of Article 2 of this Deed of Trust with respect to all leases

and subleases of the Property or Improvements now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases, or subleases covering the Property or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the “**Leases**”);

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Property or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Property or the Improvements, or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Property or the Improvements;

TOGETHER WITH all right, title, and interest now owned or hereafter acquired by Trustor in all licenses, permits, approvals, or other authorizations (federal, state, and local) used or useful in connection with or in any way relating to the Property or Improvements, including any building permits relating to the development of the Property and Improvements;

TOGETHER WITH all right, title, and interest of, but none of the obligations of, Trustor in the personal property set forth on **Exhibit B**, attached hereto, including, but not limited to (i) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Property or the Improvements not otherwise subject to a security interest, (ii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Property or the Improvements, including, without limiting the foregoing, all of Trustor’s present and future “fixtures,” “equipment,” “accounts,” “inventory”, and “general intangibles” (as such terms are defined in the *Utah Uniform Commercial Code*, or any successor statute), (iii) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, (iv) all of Trustor’s right, title and interest in and to all deposit accounts maintained with Beneficiary or any affiliate of Beneficiary, (v) all as-extracted collateral located on or taken from the Property, and (vi) all appurtenances and additions thereto and substitutions or replacements thereof (such personal property, together with proceeds (as hereinafter provided), are referred to herein collectively as the “**Personal Property**”);

TOGETHER WITH all right, title, and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH all the estate, interest, right, title, other claim, or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance, indemnities, performance or redemption bonds, judgments, awards of damages, and settlements with respect thereto) that Trustor now has or may hereafter acquire in the Property, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by

eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages);

TOGETHER WITH all water and water rights, ditches and ditch rights, reservoir and reservoir rights, stock or shares or interests in water, irrigation or ditch companies, minerals, oil and gas rights, royalties, lease or leasehold interests owned by Trustor, now or hereafter used or useful in connection with, appurtenant to or related to the Property, including, without limitation, any water rights more particularly described in **Exhibit A** attached hereto; and

TOGETHER WITH all accessions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, without limitation, the conversion, voluntary or involuntary, into cash or liquidated claims, of any of the foregoing.

The entire estate, property, right, title, and interest hereby conveyed to Trustee may hereafter be collectively referred to as the **"Trust Estate."**

TO HAVE AND TO HOLD the Trust Estate unto the Trustee and Trustee's successors, substitutes and assigns, IN TRUST, however, upon the terms, provisions, and conditions herein set forth.

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the **"Secured Obligations"**):

(a) Payment of the indebtedness in the maximum principal amount of NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$95,000.00), in the amount actually drawn by Trustor, with interest based on such drawn amounts, fees, late charges, costs and attorneys' fees, advanced to or for the benefit of Trustor, according to and evidenced by that certain Secured Promissory Note made and dated of even date herewith made by Trustor, as makers to the order of Beneficiary and any and all amendments, extensions, modifications, substitutions or renewal of the Note from time to time (the **"Note"**) executed by Trustor;

(b) Payment of this loan will bear an annual interest rate of twelve percent per annum (12%) **"Interest Rate" or "The Interest Rate"**. In the event the Beneficiary elects to advance dollars to protect the Trust Estate, then the Beneficiary will be entitled to the **"Default Rate"** of twenty percent (20%) per annum for all dollars advanced to protect the Trust Estate, which rate of interest is hereinafter referred to as the **"Default Rate"**;

(c) payment of all other sums, with interest thereon, that may hereafter be loaned to Trustor, or its successors or assigns, by Beneficiary, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;

(d) 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;

(e) 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

(f) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (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.

This Deed of Trust, the Note and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Secured Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the “**Loan Documents.**”

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

## **ARTICLE 1 COVENANTS AND AGREEMENTS OF TRUSTOR**

1.1 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair. Trustor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary. Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Property and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent allowed by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease. “Requirement” and “Requirements” mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation (a) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (b) such obligations and requirements of, in, or in respect of (i) any consent, authorization, license, permit, or approval relating to the Trust Estate, (ii) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (iii) any Lien or Encumbrance, (iv) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected, and (v) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

1.2 Required Insurance. Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force with respect to the Trust Estate, at no expense to Trustee or Beneficiary, policies of insurance in forms and amounts and issued by companies reasonably satisfactory to Beneficiary covering such casualties, risks, perils, liabilities and other hazards as is required under the Loan Documents. All such policies of insurance required by the terms of this Deed of Trust or the Loan Documents shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Trustor or any party holding under Trustor that might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Trustor.

### 1.3 Delivery of Policies, Payment of Premiums.

(a) At Beneficiary's option all policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary or shall name Beneficiary as an additional insured. Trustor shall furnish Beneficiary with certificates of insurance for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location, or by policies procured by a tenant or other party holding under Trustor; provided, however, all such policies shall meet the requirements referred to in Sections 1.2 and 1.3. At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence reasonably satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

(b) If Trustor fails to obtain, maintain, or deliver to Beneficiary the policies of insurance with respect to the Trust Estate required by this Deed of Trust, Beneficiary may, at Beneficiary's election, but without any obligation so to do, procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon promptly upon demand by Beneficiary, and until such payment is made by Trustor, the amount of all such premiums shall bear interest at the Default Rate. Upon the occurrence and during the continuation of an Event of Default and request by Beneficiary, Trustor shall deposit with Beneficiary in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Deed of Trust (funds deposited for this purpose are referred to as "**Insurance Impounds**"). In such event Trustor further agrees to cause all bills, statements, or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents evidencing that a premium for a required policy is then payable, and provided there are sufficient Insurance Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Insurance Impounds. If at any time and for any reason the Insurance Impounds are or will be insufficient to pay such amounts as may be then or subsequently due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Insurance Impounds or to be obligated to pay any amounts in excess of the amount of the Insurance Impounds, nor shall anything contained herein modify the obligation of Trustor set forth in Sections 1.2 and 1.3 to obtain and maintain insurance. Beneficiary may commingle Insurance Impounds with its own funds, and Trustor shall not be entitled to interest thereon. Beneficiary may reserve for future payments of premiums such portion of Insurance Impounds as Beneficiary in its absolute and sole discretion deems proper. If Trustor fails to deposit with Beneficiary sums sufficient to pay fully such premiums at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand with interest from the date advanced at the Default Rate, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Insurance Impounds to payment of the Secured Obligations in such order as Beneficiary may determine, notwithstanding that such Secured Obligations may not yet be due. Upon the occurrence of an Event of Default, Beneficiary may, at any time, at Beneficiary's option, apply any Insurance Impounds or Impositions Impounds under this Section 1.3 or Section 1.7, any funds paid as Rents, and any other funds of Trustor held by Beneficiary to payment of any of the Secured Obligations, in such manner and order as Beneficiary may elect, notwithstanding that such Secured Obligations may not yet be due.

#### 1.4 Casualties; Insurance Proceeds.

(a) Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Trust Estate, or any part thereof, whether or not covered by insurance. All proceeds of insurance shall be payable to Beneficiary, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds to the extent of the then outstanding obligations directly to Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, Trustor shall promptly pay over such proceeds to Beneficiary. All proceeds of insurance will be applied by Beneficiary to payment of the Secured Obligations in such order as Beneficiary shall reasonably determine.

(b) Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in Section 1.1 hereof, or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default under this Deed of Trust, or invalidate any act done pursuant to such default or notice of default.

1.5 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Trustor in and to all policies of insurance required by Section 1.2 shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

#### 1.6 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation initiated by a third party concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Trustor, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by this Deed of Trust.

(c) All sums payable by Trustor or Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency,

reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives 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. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, limited liability company, limited liability partnership, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

#### 1.7 Impositions.

(a) Trustor shall pay, or cause to be paid, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, (including, without limitation, non-governmental levies or assessments such as maintenance charges, levies, or charges resulting from covenants, conditions and restrictions affecting the Trust Estate and/or charges, fees and assessments related to water stock) that are assessed or imposed upon the Trust Estate or become due and payable and that create, may create, or appear to create a lien upon the Trust Estate (the above are sometimes referred to herein individually as an "**Imposition**" and collectively as "**Impositions**"), provided, however, that if by law any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same or cause it to be paid, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same becomes due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed a fee, tax, or assessment on Beneficiary and measured by or based in whole or in part upon this Deed of Trust or the outstanding amount of the Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in Section 1.7(a) and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency, Beneficiary may, at its option, declare all or part of the Secured Obligations, immediately due and payable. If Trustor is prohibited by law from paying such Impositions, Beneficiary may, at its option, declare all or part of the Secured Obligations due and payable on a date which is not less than six (6) months from the date such prohibition is imposed on Trustor.

(c) Subject to the provisions of Section 1.7(d) and upon request by Beneficiary, Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any Imposition is due and payable by Trustor official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof.

(d) Trustor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Trustor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.7, unless Trustor has given prior written notice to Beneficiary of Trustor's intent to so contest or object to an Imposition, and unless, in Beneficiary's absolute and sole discretion, (i) Trustor shall demonstrate to Beneficiary's satisfaction that the proceedings to be initiated by Trustor shall conclusively operate to prevent the sale of the Trust Estate or any part thereof or interest therein to satisfy such Imposition prior to final determination of such proceedings, (ii) Trustor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Beneficiary, or (iii) Trustor

shall demonstrate to Beneficiary's satisfaction that Trustor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(e) Upon the occurrence and during the continuation of an Event of Default and upon request by Beneficiary, Trustor shall pay to Beneficiary an initial cash deposit in an amount adequate to pay all Impositions for the ensuing tax fiscal year and shall thereafter continue to deposit with Beneficiary, in monthly installments, an amount equal to one-twelfth (1/12) of the sum of the annual Impositions reasonably estimated by Beneficiary, for the purpose of paying the installment of Impositions next due (funds deposited for this purpose are referred to as "Impositions Impounds"). In such event, Trustor further agrees to cause all bills, statements, or other documents relating to Impositions to be sent or mailed directly to Beneficiary. Upon receipt of such bills, statements, or other documents, and providing there are sufficient Impositions Impounds, Beneficiary shall timely pay such amounts as may be due thereunder out of the Impositions Impounds. If at any time and for any reason the Impositions Impounds are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary may notify Trustor and upon such notice Trustor shall deposit immediately an amount equal to such deficiency with Beneficiary. Notwithstanding the foregoing, nothing contained herein shall cause Beneficiary to be deemed a trustee of Impositions Impounds or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this Section 1.7(e). Beneficiary may commingle Impositions Impounds with its own funds and shall not be obligated to pay any interest on any Impositions Impounds. Beneficiary may reserve for future payment of Impositions such portion of Impositions Impounds as Beneficiary may in its absolute and sole discretion deem proper. If Trustor fails to deposit with Beneficiary sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Beneficiary may, at Beneficiary's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Beneficiary upon demand together with interest thereon at the Default Rate from the date of such advance, or at the option of Beneficiary the latter may, without making any advance whatever, apply any Impositions Impounds held by it upon any of the Secured Obligations in such order as Beneficiary may determine, notwithstanding that such Secured Obligations may not yet be due.

(f) Trustor shall not initiate or suffer to occur or exist the joint assessment of any real and personal property included in the Trust Estate or any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied, or charged to the Trust Estate as a single lien.

1.8 Utilities. Trustor shall pay when due all charges that are incurred by Trustor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.

1.9 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, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear. Trustor shall defend the Trust Estate, the title and interest therein of Trustor, and the legality, validity, binding nature, enforceability, and the priority, of this Deed of Trust against all matters.

1.10 Actions by Trustee or Beneficiary. If Trustor or Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection



therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, immediately 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 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 attorneys' fees) together with interest thereon from the date of such expenditures at the Default Rate.

1.11 Transfer of Trust Estate by Trustor. In order to induce Beneficiary to make the Loan, Trustor agrees that, in the event of any Transfer (as hereinafter defined), without the prior written consent of Beneficiary, which consent may be granted or withheld by Beneficiary in its sole and absolute discretion, Beneficiary shall have the absolute right, at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. If consent should be given by Beneficiary, any such Transfer shall be subject to this Deed of Trust, and such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Trustor or any maker or guarantor (if any) of the Note from any liability thereunder without the prior written consent of Beneficiary. As used herein, "**Transfer**" shall mean:

(a) any sale, transfer, conveyance, hypothecation, encumbrance, lease or vesting of the Trust Estate or any part thereof or interest therein to or in any Person, whether voluntary, involuntary, by operation of law, or otherwise;

(b) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any general partnership interest in Trustor or any partner in Trustor to or in any Person (if Trustor or any partner in Trustor is a partnership) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions;

(c) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any member interest in Trustor or any member in Trustor to or in any Person (if Trustor or any member in Trustor is a limited liability company) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions set forth on Exhibit C;

(d) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any shares of stock in Trustor or any partner in Trustor to or in any Person or any consolidation or merger of Trustor or any partner in Trustor into or with any Person (if Trustor or any partner or member in Trustor is a corporation) whether voluntary, involuntary, by operation of law, or otherwise, except the Permitted Exceptions; or

(e) the execution of any agreements to do any of the foregoing, except the Permitted Exceptions.

1.12 Eminent Domain.

(a) In the event that any proceeding or action be 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 (including, without limitation, inverse condemnation) or otherwise (hereinafter collectively referred to as a "Taking"), or if the same be taken or damaged by reason of any public improvement or Taking, or should Trustor receive any notice or other information regarding such Taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such Taking or damage or received by Trustor as the result of a transfer in lieu of a Taking (the "Condemnation Proceeds") are hereby assigned to Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary or Trustee may require. If Trustor receives any Condemnation Proceeds Trustor shall promptly pay over such proceeds to Beneficiary to the extent of the then outstanding Secured Obligations. Beneficiary is hereby authorized and empowered by Trustor, at Beneficiary's option and in Beneficiary's reasonable discretion, as attorney-in-fact for Trustor, to settle, adjust, or compromise any claim for loss or damage in connection with any Taking or proposed Taking and, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Trustor any such action or proceeding arising out of or relating to a Taking or proposed Taking.

(b) Trustor shall not be excused from repairing or maintaining the Trust Estate as provided in Section 1.2 or restoring all damage or destruction to the Trust Estate, regardless of whether or not there are Condemnation Proceeds available to Trustor or whether any such Condemnation Proceeds are sufficient in amount. The application or release of the Condemnation Proceeds shall not cure or waive any default or notice of default hereunder or under any other Loan Document or invalidate any act done pursuant to such default or notice of default.

1.13 Additional Security. No other security now existing, or hereafter taken, to secure the Secured Obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Secured Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, 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 Secured 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 Secured Obligations. In the event Beneficiary at any time holds additional security for any of the Secured Obligations, it may 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.

1.14 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 the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor.

1.15 Inspections. Beneficiary, and its agents, representatives, officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.16 Ownership and Liens and Encumbrances. Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be, and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances and any claims thereof

upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred percent (100%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefore 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 Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Default Rate. Such costs and expenses shall be secured by this Deed of Trust. **“Lien or Encumbrance”** and **“Liens and Encumbrances”** mean, respectively, each and all of the following in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust, excluding from the foregoing the Permitted Exceptions set forth on **Exhibit C**.

1.17 Trustee’s Powers. At any time, or from time to time, without liability therefore and without notice, 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 Secured 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.

1.18 Beneficiary’s Powers. Without affecting the liability of any Person liable for the payment of the Secured 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 Secured Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Secured 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 Secured Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.19 Financial Statements. Trustor shall deliver to Beneficiary such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Beneficiary or by the Loan Documents. All such statements shall be prepared in accordance with the requirements of the Beneficiary or as required in the Loan Documents. Beneficiary shall have the right to audit, inspect and copy all of Trustor’s books and records, relating thereto.

1.20 Trade Names. At the request of Beneficiary from time to time, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Trust Estate or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect

to the Trust Estate. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, execute any additional financing statements and other certificates necessary to reflect the change in trade names or fictitious business names

1.21 General Representations, Covenants and Warranties. Trustor represents, covenants and warrants that:

(a) **Fee Title.** Trustor holds and owns good and marketable title in fee simple to the fee lands and patented mining claims which constitute part of the Property, and has all right, full power and lawful authority to mortgage and pledge the same and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Property in accordance with the terms of this Deed of Trust; and the Property is free and clear of all damages, claims, encumbrances, liens, royalties and security interests, except the Permitted Exception. Trustor will defend title to the fee lands and patented mining claims consistent with these representations and warranties.

(b) **Maintenance of Lien.** Trustor will maintain and preserve the current lien position of this Deed of Trust until the indebtedness evidenced by the Note and other secured sums have been paid in full.

(c) **Trustor's Solvency.** Trustor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency proceedings are pending or contemplated by or against Trustor.

(d) **Payment for Equipment and Improvements.** As of the date of this Deed of Trust, all costs arising from past construction of any improvements and the purchase of all equipment and materials located on the Property have been paid.

(e) **Underlying Agreements.** Trustor covenants, represents and warrants, which covenants, representations and warranties shall survive termination of this Deed of Trust, that: (a) Trustor's execution and delivery of this Deed of Trust and the instruments to be executed and delivered by Trustor in accordance with the terms of this Deed of Trust will not conflict with or result in a breach of or default under any of the terms, conditions or provisions of any of the Underlying Agreements; (b) there are no actions, claims, litigation, proceedings or suits pending or threatened against Trustor or any of the collateral which could, if continued, adversely affect Trustor's ability to fulfill Trustor's obligations under this Deed of Trust; (c) Trustor has not previously assigned, optioned, subleased or otherwise encumbered its interest in the Underlying Agreements or any part of the collateral; (d) there has been no act or omission by Trustor which could result by notice or lapse of time in the abandonment, breach, default, forfeiture, relinquishment or termination of any of the Underlying Agreements or any other agreement, contract or instrument relating to the Property to which Trustor is a party or in accordance with which Trustor is obligated; and (e) at Beneficiary's request, Trustor will request and obtain from each lessor, sublessor or optionor, as applicable, under the Underlying Agreements an instrument in accordance with which each such party certifies that the Underlying Agreement to which it is a party is fully effective and in good standing.

(f) **Survival of Representations and Warranties.** All representations, warranties, covenants and disclosures of Trustor contained in the Note, this Deed of Trust and the other Loan Documents are incorporated by reference in them, are incorporated by reference in this Deed of Trust and shall survive the execution and delivery of this Deed of Trust and shall remain continuing covenants, conditions, representations and warranties of Trustor so long as any portion of the obligations secured by this Deed of Trust remain outstanding and shall inure to the benefit of and be enforceable by any person who may acquire title pursuant to foreclosure proceedings or deed in lieu of foreclosure.

(g) **Compliance with Laws.** Since Trustor's taking of possession of the Property, the Property has complied with and from the date of this Deed of Trust will continue to comply with, all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health and environmental laws and regulations and all other material applicable laws, rules and regulations, including, without limitation, any requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12111 *et seq.* Trustor and the Property shall, at all times, comply with the Endangered Species Act (16 U.S.C. § 1531-1544), as the Endangered Species Act may impact or affect the construction, development and use of the Property. If Trustor receives notice from any federal, state or other governmental body that it is not in compliance with any ordinance, code, law or regulation, Trustor will immediately attempt to cure any violation and will provide Beneficiary with a copy of such notice promptly.

(h) **Area and Location of Property.** Either the Property is not more than 40 acres in area or the Property is located within an incorporated city or village.

## ARTICLE 2 ASSIGNMENT OF RENTS

2.1 **Assignment of Rents.** Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all the Rents of the Trust Estate and each and every unit and sub-unit related thereto, and hereby gives to and confers upon Beneficiary the right, power, and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive, and enforce payment, to give receipts, releases, and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Secured Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs all lessees, tenants, and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; *provided, however,* that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred hereunder or under the other Loan Documents. The assignment of the Rents of the Trust Estate in this **Article 2** is intended to be an absolute assignment from Trustor to Beneficiary, and not merely the grant of a lien or security interest.

2.2 **Collection Upon an Event of Default.** Upon the occurrence of an Event of Default, Beneficiary may, 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 Secured Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon payment of the Secured Obligations in such order as Beneficiary may determine. 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 default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new leases, to cancel, surrender, alter or amend the terms of, and/or renew existing leases collectively, the "Leases", and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth and gross negligence and willful misconduct.

2.3 Application of Rents. Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, 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 Secured Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. 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.

2.4 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 instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.

2.5 Indemnity. Trustor hereby agrees to indemnify and hold harmless Beneficiary for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

2.6 Tenant Information. Trustor agrees to provide Beneficiary with a current and updated rent roll and contact information for each tenant and subtenant and update Beneficiary in the event of a change of any of the previously provided information.

2.7 Presentment. Beneficiary may present a copy of this Deed of Trust as absolute evidence of the Assignment of Rents hereunder..

2.8 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, 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 any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and 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.

### **ARTICLE 3 SECURITY AGREEMENT**

3.1 Creation of Security Interest. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah Uniform Commercial Code. With respect to Personal Property comprising the Trust Estate, whether now owned or existing or hereafter acquired or arising, wherever located and whether in Trustor's possession and control or in the possession and control of a third party, Beneficiary is granted a security interest hereunder, and shall be entitled to all the rights and remedies of a "secured party" under the Utah Uniform Commercial Code.

3.2 Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness 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 or Improvements 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 consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of equal or greater value.

(c) Trustor's principal place of business is in the State of Utah at the address set forth in the introductory paragraph hereof. Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of any change in its place of business or the adoption or change of any trade name or fictitious business name, and hereby authorizes Beneficiary to prepare, file and record any additional financing statements or other certificates necessary to reflect the adoption or change in trade name or fictitious business name.

(d) With the consent of Trustor, which will not be unreasonably withheld, Beneficiary, may prepare, file and record such financing statements in accordance with the applicable Uniform Commercial Code, or such other documents as may be required from time to time to create, maintain and perfect the liens and security interests granted herein. Trustor acknowledges that the address for Trustor appearing in the introductory paragraph hereto is the chief executive office of Trustor. Trustor further acknowledges that it is a limited liability company organized and existing under the laws of the State of Utah as described in the introductory paragraph hereto. Trustor covenants and agrees that it will not make any change to its legal name, which legal name as shown in the introductory paragraph hereto is true and correct, its state of formation, organization or registration, or the location of its chief executive office or principal place of business, or its organizational structure or governing documents, without the prior written consent of Beneficiary. Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

(e) The grant of a security interest to Beneficiary by this Deed of Trust shall not be construed to derogate from or impair the lien or provisions of, or the rights of Beneficiary under, this Deed of Trust with respect to any property described herein which is real property, or which the parties have agreed to treat as real property.

3.3 Use of Personal Property by Trustor. Until the occurrence of an Event of Default 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.

#### 3.4 Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Section 4.2 hereof, upon the occurrence of an Event of Default hereunder, Beneficiary shall have all of the rights and remedies of a Secured Party under the Utah Uniform Commercial Code, and Beneficiary may, at its option, 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) With reasonable notice and 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, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(iii) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by 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;

(iv) 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;

(v) 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

(vi) Exercise any other remedies of a secured party under the Utah Uniform Commercial Code, the other Loan Documents 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 ten (10) 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 in Section 6.4.

(c) The proceeds of any sale under Section 3.4(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, without limitation, costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

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

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

Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.



3.5 Security Agreement. This Deed of Trust constitutes and shall be deemed to be a “security agreement” for all purposes of the Uniform Commercial Code of Utah and Beneficiary shall be entitled to all the rights and remedies of a “secured party” under such Uniform Commercial Code.

3.6 Fixture Filing. 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 and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of 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.

3.7 Financing Statement. Upon obtaining the prior written consent of the Trustor, which shall not be unreasonably withheld or delayed, Trustor hereby irrevocably authorizes Beneficiary at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (A) indicate the Collateral (1) as all assets of Trustor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the applicable Uniform Commercial Code or such jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (B) contain any other information required by Part 5 of Article 9 of the applicable Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor, and (2) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor also ratifies its authorization for Beneficiary to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Beneficiary is fully authorized to file, record, or otherwise utilize such documents as it deems necessary to perfect and/or enforce any security interest or lien granted hereunder.

Trustor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary and agrees that it will not do so without the prior written consent of Beneficiary, subject to Trustor’s rights under Section 9-509(4)(b) of the applicable Uniform Commercial Code.

#### **ARTICLE 4 REMEDIES UPON DEFAULT**

##### 4.1 Events of Default.

- (a) Each of the following shall constitute an event of default (“**Event of Default**”):
- (i) An uncured Event of Default under the Note as Event of Default is therein defined.
  - (ii) Any representation or warranty by Trustor in any Loan Document is materially false, incorrect, or misleading as of the date made and not cured within 30 days of written notice thereof.
  - (iii) The occurrence of any Transfer, unless prior to such Transfer, the holder of the Note has delivered to Trustor the written consent of such holder to such Transfer.

(b) Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Secured Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified in Section 3.4:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon the Secured Obligations, all in such order as Beneficiary may determine. 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 upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale;

(ii) Commence an action to foreclose the lien of this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof

(iii) Exercise of the power of sale herein contained and deliver to Trustee a written statement of breach, notice of default and election to cause Trustor's interest in the Trust Estate to be sold; or

(iv) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Secured Obligations, or by law.

4.2 Exercise of Power of Sale. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Trust Estate 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 any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause 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*, 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. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property 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. Trustee shall apply the proceeds of the sale as follows:

FIRST: To the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney's fees actually incurred not to exceed the amount which

may be provided for in the trust deed.

SECOND: To payment of the obligations secured by the trust deed.

THIRD: The balance, if any, to the person or persons legally entitled to the proceeds, or the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place.

Upon any sale made under or by virtue of this section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Beneficiary may bid for and acquire the Trust Estate or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Secured Obligations of Trustor secured by this Deed of Trust the net sales price, after deducting therefrom the expenses of the sale and the cost of the action and any other sums which the Beneficiary is authorized to deduct under this Deed of Trust. Beneficiary, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws.

4.3 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Article 9 of the Utah Uniform Commercial Code, Beneficiary, upon an Event of Default, may proceed under the Utah Uniform Commercial Code or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect of real property, and treat both real and personal property interests as one parcel or package of security.

4.4 Appointment of Receiver. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers 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. Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Secured Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Secured 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 law, either of them may pursue inconsistent remedies.

4.5 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.

4.6 Marshalling of Assets. Trustor, on its own behalf and on behalf of its successors and assigns, hereby expressly waives all rights to require a marshalling of assets by Trustee or Beneficiary, or to require Trustee or Beneficiary, upon a foreclosure, to first resort to the sale of any portion of the Trust Estate which might have been retained by Trustor before foreclosing upon and selling any other portion as may be conveyed by Trustor subject to this Deed of Trust.

4.7 No Merger. In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Secured Obligations, the Secured Obligations then due Beneficiary shall not be merged into any decree of foreclosure entered by the court, and Beneficiary may concurrently or subsequently seek to foreclose one or more mortgages or deeds of trust which also secure said Secured Obligations.

4.8 Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 6.4.

4.9 Suits to Protect the Property. Beneficiary shall have the power and authority, but shall have no obligation, to institute and maintain any suits or proceedings as Beneficiary may deem advisable (a) to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Deed of Trust; (b) to preserve or protect its interest in the Property; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security or be otherwise prejudicial to Beneficiary's interest.

## ARTICLE 5 RELEASE AND RECONVEYANCE OF TRUST ESTATE

5.1 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Secured Obligations have been satisfied in full, 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 recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.2 Partial Reconveyance. At any time, without liability therefore and without notice, and without affecting the personal liability of Trustor or any other person for payment of the Secured Obligations, Trustee may, with the consent of Beneficiary: (a) release and reconvey by, deed of reconveyance, any part of the Trust Estate from the lien hereof (b) consent to the making and recording of any maps or plats of the Trust Estate; (c) join in granting any easement on the Trust Estate; or (d) join in any extension agreement or any agreement subordinating or modifying the lien or charge hereof. If Trustee shall perform any such acts or execute complete or partial reconveyances it shall be paid a fee in accordance with its established fees and charges therefor.

## ARTICLE 6 MISCELLANEOUS

6.1 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a 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 in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

6.2 Trustor Waiver of Rights. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the Secured Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Trustor may have or be able to assert pertaining to the rights and remedies of sureties.

6.3 Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, (except for any notice address which is a post office box, in which case notice shall be given by first class mail) through the United States Postal Service to the addresses set forth above or such other address which the parties may provide to one another in accordance herewith. Such notices, requests and demands, if sent by mail, shall be deemed given two (2) days after deposit in the United States mail, and if delivered by hand, shall be deemed given when delivered.

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

6.5 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

6.6 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

6.7 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

6.8 Attorneys' Fees. If any or all of the Secured Obligations are not paid when due or if an Unmatured Event of Default or Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney's fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level), together with interest therein from the date of demand at the Default Rate, which Default Rate shall accrue after any judgment Lender may obtain against Trustor.

6.9 Governing Law. THIS DEED OF TRUST AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH (EXCLUDING UTAH CONFLICT OF LAWS RULES) (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY HEREIN). EXCEPT AS OTHERWISE PROVIDED HEREIN WITH REGARD TO THE EXERCISE OF CERTAIN REMEDIES AND THE ENFORCEMENT HEREOF, THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF SALT LAKE, STATE OF UTAH OR EACH OF TRUSTOR AND BENEFICIARY WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 6.10. WHENEVER POSSIBLE, THE PROVISIONS OF THIS DEED OF TRUST SHALL BE INTERPRETED IN SUCH A MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW.

6.10 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.

6.11 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

6.12 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

6.13 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.

6.14 Status of Title. Trustor represents and warrants that it is the lawful owner of the Trust Estate free and clear of all Liens and Encumbrances and holds a fee simple estate in the Property and Improvements, subject only to the Permitted Exceptions and that Trustor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust.

6.15 Integration. The Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

6.16 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Trustor, Trustee and Beneficiary and their respective successors and assigns.

6.17 Time of the Essence. Time is of the essence with regard to each provision of the Loan Documents as to which time is a factor.

6.18 Survival. The representations, warranties, and covenants of the Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

[SIGNATURE PAGE FOLLOWS]

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

**TRUSTOR:**

**BM3, LLC, a Delaware Limited Liability Company**

By: 


Name: Kenneth Truman Thomson

Title: Managing Member

STATE OF UTAH)

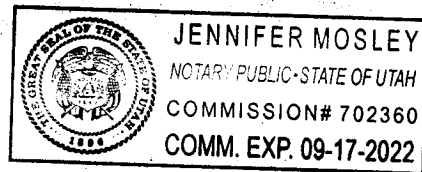
COUNTY OF Davis, : ss.

On June 4, 2019, before me, the undersigned, a notary public in and for said State, personally appeared Kenneth Truman Thomson personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he / she executed the same in his capacity as Managing Member of BM3, LLC and that by his / her signature on the instrument, the entity upon behalf of which he / she acted, executed the instrument.

  
NOTARY PUBLIC

My Commission Expires:

09-17-22





**EXHIBIT A  
TO  
DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING  
(First Lien Position)**

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**Legal Description**

All that real property situated in the 572 West Lake Street, Ogden, UT 84401, County of Weber, State of Utah, more particularly described as follows:

The East 55.5 feet of Lots 11 and 12, Block 10, WEST OGDEN ADDITION, Ogden City, Weber County, Utah, according to the official plat thereof.

Tax ID Number: 14-027-0007

**EXHIBIT B  
TO  
DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING**

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**Personal Property**

(a) All personal property, (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Property or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Trustor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Property, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Secured Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Property, the Improvements or any other part of the Trust Estate, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) Trustor's rights under all insurance policies covering the Property, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(d) All water stock relating to the Property;

(e) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Property, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Property, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any loss or diminution in value of the Property, the Improvements, the Personal Property, or any other part of the Trust Estate;

(f) All geological, architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Property and all studies, data, and drawings related thereto; and also all contracts and agreements of the Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Property;

(g) All proceeds from sale or disposition of any of the aforesaid collateral; and

(h) All Trustor's rights in proceeds of the loan evidenced by the Note.

As used in this **Exhibit B** the terms "Secured Obligations", "Note", "Trust Estate", "Property", "Improvements", and "Personal Property" shall have the meanings set forth in the Deed of Trust to which this **Exhibit B** is attached.

**EXHIBIT C  
TO  
DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT, AND FIXTURE FILING**

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**Permitted Exceptions**

The term “**Permitted Exceptions**” means the following:

1. Liens and Encumbrances being contested in accordance with **Section 1.17** of this Deed of Trust.
2. Impositions being contested in accordance with **Section 1.8(d)** of this Deed of Trust.
3. This Deed of Trust.
4. The lien of current Real Property taxes not yet due.
5. The matters approved by Beneficiary in writing as title exceptions to be shown in the Title Insurance Policy in favor of Beneficiary.