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BK 7445 PG 1852

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
2/7/2020 3:47:00 PM  
FEE \$40.00 Pgs: 14  
DEP eCASH REC'D FOR PREMIUM TITLE & ESC

Tax Parcel Number(s):  
06-089-0080

*When recorded, mail to:*

Gunlock Capital LLC  
Attn: Jason V. Nielsen  
5396 West 2400 South  
West Valley City, Utah 84120

*Space above this line for Recorder's use only*

## DEED OF TRUST

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE PROPERTY 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."

THIS DEED OF TRUST (this "*Deed of Trust*") is made as of this 7th day of February, 2020, among BLUEMOUNTAIN, INC, a Utah Corporation, whose address is 45 E. Gentile St, Layton, UT 84041, as trustor ("*Trustor*"), DOUGLAS J. SHUMWAY, ESQ., whose address is 310 S Mary's Street, Suite 2100, San Antonio, TX 78205, as trustee ("*Trustee*"), and GUNLOCK CAPITAL LLC, a Utah limited liability company, whose address is 5396 West 2400 South, West Valley City, Utah 84120, as beneficiary ("*Beneficiary*").

### WITNESSETH:

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 conveys, transfers, pledges and assigns in trust to Trustee, with power of sale, and grants to Beneficiary a security interest in, all of Trustor's present and future right, title and interest in and to all of the following property (severally and collectively, the "*Property*"):

(a) All of that certain real property located in Davis County, State of Utah, and more particularly described in the attached Exhibit A and as follows (the "*Real Property*"): Tax Parcel No.: 06-089-0080, also known by street and number as: 2441 South 1560 West, Woods Cross, UT 84087.

(b) All present and future tenements, hereditaments, easements, plats, declarations, bylaws, rights, leases, guaranties of leases, subleases, licenses, benefits, privileges, permits, water, water rights, grandfathered water rights, irrigation rights, ditch rights, shares of stock in irrigation districts or evidencing water rights, contracts for effluent, all other contractual rights to water, rights of way, pipes, ditches, fences and appurtenances belonging or in any way appurtenant to, and all oil, gas and other hydrocarbons and other minerals produced from or underlying, the Real Property or any portion thereof, or any improvements or development thereon, and all reversions, remainders, rents, issues, and profits thereof;

(c) All buildings and improvements now or hereafter erected on the Real Property or any portion thereof, and all equipment, inventory and fixtures now or hereafter attached to or located on or used in connection with the Real Property;

(d) All present and future licenses, permits, approvals and agreements from or with any governmental or quasi-governmental agency or entity or any other person relevant to the zoning, subdivision, division, development, improvement, use, lease, sale or other disposition of the Real Property or any portion thereof, or any buildings or improvements now or hereafter erected, placed or located on the Real Property or any portion thereof;

(e) All present and future plans, specifications, drawings, analyses, surveys, reports and other design products, relating to all present and future buildings and tenant and other improvements (including landscaping) constructed on the Real Property or any portion thereof, and all rights in and to all architectural and engineering contracts, surety bonds, warranties, land use plans, studies, building contracts, soils reports, appraisals, feasibility and market studies, management agreements, operating agreements, service contracts, development contracts, design contracts, sign design contracts, space planning contracts and any other agreements with respect to planning, designing, developing, or inspecting construction on, the Real Property or any portion thereof and any buildings or improvements thereon, together with any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(h) All rights under any policy or policies of insurance (including premium refunds and credits and insurance proceeds) insuring against damage or loss with respect to any portion of the Property, including all fire, casualty, business interruption, rent loss and flood insurance, whether or not such insurance is required by this Deed of Trust or Beneficiary;

(i) All fixtures, attachments, equipment, machinery, hardware, goods, materials, supplies, furniture, furnishings and all tangible personal property of any kind or nature, now or hereafter located at or upon the Real Property, including, without limitation, all appliances, electrical fixtures, lighting fixtures, plumbing fixtures, furnaces, boilers, air conditioning units, coolers, windows, shutters, window coverings, doors, door hardware, carpets, rugs, cabinets, countertops, etc.

(k) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards (or proceeds of any purchase in lieu thereof) which are or may become payable with respect thereto), and (iv) books, records and files relating to, all or any portion of the items described in the preceding paragraphs.

The foregoing descriptions of items constituting the Property shall be construed as cumulative and not limiting, and the term "including", when used in those descriptions, shall mean without limitation by reason of enumeration. Unless the context clearly indicates otherwise, the terms "equipment," "inventory," "accounts," "instruments," "chattel paper," "general intangibles," "proceeds" and "products" shall have the meanings provided for those terms in the Utah Uniform Commercial Code ("*Utah UCC*") in effect on the date of this Deed of Trust.

This Deed of Trust is given in consideration of and as security for: (i) the payment of a loan by Beneficiary to Trustor (the "*Loan*") evidenced by that certain promissory note (the "*Note*") of approximately even date herewith executed by Trustor and payable to the order of Beneficiary in the principal amount of principal amount of ONE MILLION DOLLARS AND 00/100, together with interest thereon and charges with respect thereto, and any and all advances now or hereafter made by Beneficiary under the terms and conditions of the Note or this Deed of Trust, and any and all renewals, replacements, amendments, modifications or extensions of the Note or this Deed of Trust; (ii) all of the terms, conditions, agreements, stipulations, covenants, and provisions of this Deed of Trust and any loan agreement or other agreement, document or instrument (and any and all renewals, replacements, amendments, modifications or extensions thereof), given by Trustor to Beneficiary to evidence or to secure the indebtedness secured hereby (collectively, the "*Loan Documents*"); (iii) payment of all sums advanced by Beneficiary to protect the Property, with interest thereon as provided by the Note; (iv) Trustor's 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 Property is bound or may be affected; and (v) all modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (a) 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 (b) 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 shall also secure the payment and performance of any additional loans that may hereafter be made by Beneficiary to Trustor which are evidenced by a promissory note or notes or other writings stating that they are secured by this Deed of Trust. All of the foregoing payments and performances secured by this Deed of Trust are sometimes hereinafter referred to as the "*Obligations*."

TRUSTOR, TO PROTECT THE PROPERTY AND SECURITY GIVEN BY THIS DEED OF TRUST, HEREBY WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

1. **WARRANTY OF TITLE.** Trustor warrants that it is the sole owner of good and marketable title to the Property, and Trustor will forever defend the same against all claims and persons whomsoever, unto Beneficiary, its successors and assigns, subject only to the matters approved by Beneficiary as acceptable exceptions to title pursuant to the provisions of the closing instruction letter delivered herewith to the title insurance company insuring the lien of this Deed of Trust. All of Trustor's present and future right, title and interest in the Property shall be subject to the lien and other terms and provisions of this Deed of Trust regardless of the time that any such right, title and interest is created, obtained by or conveyed, transferred or assigned to Trustor.

2. **OBLIGATION TO MAINTAIN PROPERTY; REPAIRS; INSPECTION BY BENEFICIARY.** Trustor shall care for and keep and maintain the Property in good order, condition and repair and will, at all

times, make such repairs, maintenance, renewals and replacements as shall be necessary to maintain the Property and abutting grounds, sidewalks, roads, parking and landscape areas in good condition and repair, all to the same extent as a prudent owner would make. To the extent Beneficiary has provided its written consent and agreement to permit Trustor to undertake construction or remodeling at or upon the Property, Trustor shall commence construction promptly and pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary. Further, Trustor shall allow Beneficiary to inspect the Property at all times during construction. In the event of any loss, damage or destruction to the Property, Trustor shall, to the extent that insurance proceeds are available for rebuilding, or if an applicable Lease (defined in Section 6 below) requires rebuilding in the absence of available insurance proceeds, promptly and in a good and workmanlike manner repair, rebuild and restore such loss, damage or destruction to its original condition, pay when due all costs incurred, and keep the Property free from all claims, charges, claims of liens, or encumbrances for work performed or materials furnished, whether superior or subordinate to the lien of this Deed of Trust. Beneficiary shall have the right at its sole risk to enter upon the Property at any and all reasonable times and to inspect the same to ascertain whether Trustor is in compliance with the terms and provisions of this Deed of Trust.

3. **INSURANCE.** Trustor shall provide and maintain in force at all times all risk property damage insurance on the Real Property and such other type of insurance on the Real Property as may be required by Beneficiary in its reasonable judgment. At Beneficiary's request, Trustor shall provide Beneficiary with a counterpart original of any policy, together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. Each such policy of insurance shall be issued by an insurer, in an amount, for a term, and in form and content satisfactory to Beneficiary. In addition, each policy of hazard insurance shall include a loss payable endorsement in favor of Beneficiary, in a form acceptable to Beneficiary. Any insurance provided in accordance with the terms of this paragraph may not be cancelled except upon ten (10) days prior notice in writing to Beneficiary.

4. **PAYMENT OF TAXES, ASSESSMENTS AND OTHER LIENS OR CHARGES.** At least five (5) days prior to delinquency, Trustor shall pay or cause to be paid to the proper officials or persons all taxes and assessments, general or special, of every nature and description (including assessments, dues, use fees and charges for water) that shall have been levied or assessed on the Real Property and, upon Beneficiary's request, shall deliver to Beneficiary receipts evidencing such payments.

5. **EMINENT DOMAIN.** Any award or payment of damages or compensation in connection with any private trespass or injury to the Property, exercise of the right of eminent domain or any condemnation proceeding for public use of or injury to the Property or any part thereof, or any right or interest therein, is hereby assigned and payable to Beneficiary, which may apply or release all or any portion of such award, compensation or damages received by it (net of the costs and expenses incurred by Beneficiary in collecting such amounts) in the sole discretion of Beneficiary.

(a) **ASSIGNMENT OF RENTS, PROFITS AND LEASES.** Trustor represents and warrants to Beneficiary (and to any title insurance company which insures the lien of this Deed of Trust) that, except as specifically disclosed by Trustor to Beneficiary, in writing, and identified on the title commitment issued to Beneficiary in connection with this Deed of Trust, as of the time of recordation of this Deed of Trust, no recorded or unrecorded lease or rental agreement exists that affects any portion of the Real Property. All rents, revenues, income, receipts, issues and profits

of the Real Property hereafter arising out of any Leases (hereinafter defined) (collectively, "Rents") and the entire right, title and interest of Trustor (including the right to exercise any landlord's liens and any and all other rights and remedies to which Trustor would be entitled under any Lease or by law) in and under all present and future rental agreements, leases, subleases, licenses and all other agreements for the use and occupancy of all or any portion of the Property (including rights in any security deposits and advance rentals held for the benefit of Trustor), together with any extensions, renewals and modifications thereof (collectively, "Leases"), are hereby absolutely assigned and transferred to Beneficiary. Beneficiary is authorized to give notice of this assignment, and Trustor agrees to execute, and to cause its property managers and affiliates to execute, any and all further instruments that Beneficiary may require to perfect this assignment. Any provision hereof notwithstanding, so long as no Event of Default exists, Trustor shall have a license to collect assigned Rents as the same shall fall due. However, upon the occurrence of any Event of Default, all right of Trustor to collect or receive such Rents (including those past due and unpaid) shall terminate, whereupon Beneficiary shall be entitled to demand and receive the payment of such Rents (including those past due and unpaid), and to proceed against any lessee or tenant (or its property) and/or any guarantors of the obligations of any lessee or tenant. In such event, Trustor directs and authorizes the lessees and tenants of the Property and any guarantors to make to Beneficiary all payments required under the applicable Leases; Trustor hereby relieves any and all lessees and tenants from any liability to Trustor that Trustor might otherwise assert by reason of the lessee/tenant's making such payment to Beneficiary. All Rents collected by Beneficiary may be applied for the following purposes in any manner and order that Beneficiary deems advisable: (i) to the payment of all taxes and assessments levied against the Property if provision for paying those items has not otherwise been made; (ii) to the payment of operating costs and expenses (including management fees, sales taxes, repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Property; (iii) to the payment of any amounts due and owing to Beneficiary under the terms of the Obligations; (iv) to the payment of any lease payments under any ground lease or amounts secured by any other mortgage or deed of trust on the Property approved by Beneficiary; and (v) any remainder to Trustor or its designee or other assignee. Receipt by Beneficiary of Rents shall not constitute a waiver of any other right that Beneficiary may have under this Deed of Trust or the laws of Utah, nor shall the receipt and application thereof cure any Event of Default or affect any foreclosure proceeding or any sale authorized by this Deed of Trust or the laws of Utah. Except as expressly permitted by the this Deed of Trust, Trustor shall not, without Beneficiary' prior written consent: (i) assign any of the Rents; (ii) terminate or accept a surrender of any Lease (except in the ordinary course of business in the exercise of Trustor' sound business judgment); (iii) amend or modify any Lease; (iv) subordinate, or permit the subordination of, any Lease to the lien of a mortgage or deed of trust that is junior to this Deed of Trust; or (v) take, fail to take or suffer any action that would impair the security for the Obligations or Beneficiary' interest in the Property or the Rents. Any action taken in violation of the foregoing sentence shall be null and void. Trustor shall fully and timely perform all of the obligations of the landlord under all Leases of any portion of the Property and shall enforce, short of termination, the performance by all lessees and tenants of all of their obligations under the Leases. Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease, and Trustor hereby agrees to indemnify and hold Beneficiary harmless from any and all liability arising from any of the Leases or from the assignment contained in this Section 6.

#### 6. SECURITY AGREEMENT.

(a) **Creation of Security Interest.** This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Utah UCC. With respect to personal property comprising any part of the Property ("**Personal Property**"), 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 UCC.

(b) **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: (i) the Personal Property is not used or bought for personal, family or household purposes; (ii) The tangible portion of the Personal Property will be kept on or at the Real Property or any 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 greater value; and (iii) Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

(c) **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.

(d) **Remedies Upon an Event of Default.** In addition to the remedies provided herein, 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 UCC. 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.

7. **UNIFORM COMMERCIAL CODE FILINGS.** This Deed of Trust is intended to and shall create a security interest in favor of Beneficiary in those items of the Property which are covered by the Utah UCC, although such items are to be considered fixtures to the fullest extent permitted by law. This Deed of Trust constitutes a security agreement and a financing statement (fixture filing) and it is hereby recited (to the extent that such recitation is required by Utah law because any portion of the Property may constitute fixtures) that this Deed of Trust is to be filed in the office where a mortgage on the Real Property would be recorded. Trustor is the record owner of the Real Property. A carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall also be sufficient for filing and/or recording as a financing statement. Trustor irrevocably authorizes Beneficiary to prepare and file, in accordance with the Utah UCC, financing statements, or such other documents as may be required from time to time to create, maintain and perfect the liens and security interests granted herein. All items of the Property constituting tangible personal property shall be kept on the Real Property and shall not be removed therefrom without the prior written consent of Beneficiary. Upon the occurrence of any Event of Default, in addition to any other remedies available under the Loan Documents or applicable law: (i) Beneficiary may enter upon the Real Property to take possession of, assemble

and collect any or all personal property collateral or to render it unusable; and (ii) Beneficiary may require Trustor to assemble such collateral and make it available at a place designated by Beneficiary which is mutually convenient to allow Beneficiary to take possession or dispose of such collateral.

8. REPLACEMENT OR ADDITION OF FIXTURES OR PERSONAL PROPERTY SUBJECT TO ENCUMBRANCE. Trustor shall provide written notice to, and obtain the consent of, Beneficiary prior to replacing, adding or installing any fixture or personal property constituting (or that will thereafter constitute) a portion of the Property. Trustor's failure to give notice shall constitute a material breach of this Deed of Trust and an Event of Default. As used in this Section 9, the term "*security interest*" shall include a lease.

9. ACTIONS OR PROCEEDINGS AFFECTING PROPERTY; DUTY TO APPEAR. Trustor agrees to appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security, rights or powers of Beneficiary hereunder or that seeks to impose liability on Trustee or Beneficiary because of any act or omission of Trustor, and Trustor shall pay all costs and expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the security or priority hereof or the rights or powers of Beneficiary. Beneficiary may, if Beneficiary reasonably determines that Trustor is failing or will fail to do so, pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien which, in the judgment of Beneficiary, appears to be prior or superior to the lien of this Deed of Trust. All amounts paid, suffered or incurred by Beneficiary in exercising the authority granted in this Deed of Trust, including reasonable attorney fees, shall be added to the Obligations, shall be a lien on the Property and shall be due and payable by Trustor to Beneficiary on demand, together with interest from the date of advance until paid.

10. ADDITIONAL DOCUMENTS. Trustor agrees to execute and deliver to Beneficiary, upon demand, any additional agreements, instruments or documents that Beneficiary deems reasonably necessary on a conservative basis to secure to Beneficiary any right or interest granted or intended to be granted to Beneficiary under this Deed of Trust. In the event any rights, easements or other hereditaments shall hereafter become appurtenant to any part of the Real Property, they shall become subject to the lien of this Deed of Trust.

11. SALE, LEASE OR CONVEYANCE BY TRUSTOR. Trustor shall not sell, lease, convey or further encumber (including granting any easements (except for public utility or other easements needed to service the improvements being constructed on the Real Property) or other interests affecting title to the Real Property) or pledge or hypothecate or in any manner dispose of any of its interest in all or any portion of the Property, voluntarily, involuntarily or by operation of law. It shall constitute a material and incurable default if the Property, or any part thereof, is sold, leased, conveyed, further encumbered, pledged, hypothecated or otherwise transferred.

12. RECORD INSPECTION. Trustor will permit Beneficiary or its representatives from time to time to examine within the county in which the Real Property is located all books and records and agreements of Trustor pertaining to any portion of the Property.

13. SUBSTITUTE PERFORMANCE. Should Trustor fail to pay or perform any portion of the Obligations, then Beneficiary, without obligation to do so and without releasing Trustor from any

portion of the Obligations, with or without notice to Trustor (except as may be required by applicable law), may pay or perform the same in such manner and to such extent as Beneficiary, in its sole good faith discretion, may deem necessary on a conservative basis to protect the security hereof. Beneficiary shall be authorized to enter upon the Property for such purposes. All expenses or charges that Beneficiary may incur in connection with the care or preservation of the Property or any part thereof at any time, or the payment of any taxes, assessments, insurance premiums, or encumbrances levied upon or attaching to the Property or any portion thereof or interest therein, or any cost of redemption thereon, or any sums of money, charges, expenses or fees which Beneficiary may pay pursuant to any provision hereof or of the Note, shall be added to the Obligations, shall be payable by Trustor on demand, and shall bear interest at the then effective interest rate from the date of advance until paid. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligations.

14. EVENTS OF DEFAULT; ACCELERATION; REMEDIES. Subject only to any applicable notice and cure provisions set forth in the Note, upon the occurrence of any Event of Default (as defined in the Note), and at any time thereafter while such Event of Default is continuing, Beneficiary may declare the Obligations to be immediately due and payable pursuant to the Note, and Beneficiary may exercise any one or more of the rights and remedies described herein and in the other Loan Documents.

15. BENEFICIARY'S RIGHT TO POSSESSION. Following the occurrence of an Event of Default, then Beneficiary shall, at its option, be entitled to the immediate possession of the Property, with the right to manage the same as a mortgagee in possession, to operate any business thereon at the expense of and for the account of Trustor, and to collect and apply the Rents as described in Section 6 hereof. Trustor and all persons claiming under Trustor shall, upon demand, immediately deliver possession of the Property to Beneficiary or its assigns. Beneficiary shall not be liable to Trustor for any obligation or charge in dealing with the Property as a mortgagee in possession (other than for loss caused by Beneficiary's gross negligence or willful misconduct or that of Beneficiary's employees, agents and representatives). Nothing in this Section 16 shall impose upon Beneficiary: (i) any duty, obligation or responsibility for the control, care, management or repair of the Property, or for complying with or enforcing any of the terms and conditions of any lease agreement; or (ii) any responsibility or liability for any waste committed on the Property by the tenants or by any other persons, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to any tenant, licensee, employee or other person.

16. ADDITIONAL REMEDIES OF BENEFICIARY; NO WAIVER. In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies allowed or provided for under or described in the Note and all other writings executed or delivered in connection with the Obligations, or available under applicable law. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Without limitation, upon the occurrence of any default under the Note and/or hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's



delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or breach. By accepting any performance or payment of any portion of the Obligations after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligations or to consider failure to so perform or pay a default hereunder.

17. **SALE BY TRUSTEE PURSUANT TO POWER OF SALE; JUDICIAL FORECLOSURE.** After the lapse of such time as may then be required by Utah law or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by applicable law, Trustee, without demand on Trustor, may sell the Property on the date and at the time and place designated in the notice of sale, in such order as Beneficiary may determine (but subject to Trustor's statutory rights, if any, under applicable law), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the notice 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 in the place and manner required by applicable law. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with applicable law, conveying the Property so sold, but without any covenant or 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. The provisions of this Section 18 are intended to be entirely consistent with, and to incorporate all rights and remedies available to Beneficiary under applicable law. To the extent of any inconsistency between this Deed of Trust and applicable law, this Deed of Trust shall, at the sole election of Beneficiary, be deemed amended to be consistent with such statute, or Beneficiary may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

18. **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, any Beneficiary may commence suit to collect such deficiency in accordance with applicable law.

19. **NO MERGER.** In the event of a foreclosure of this Deed of Trust or any other mortgage or deed of trust securing the Obligations, the 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 Obligations.

20. **REQUEST FOR NOTICE BY TRUSTEE AND BENEFICIARY.** Both the Trustee and the Beneficiary hereby request that a copy of any notice of default and/or any notice of sale with respect to any portion of the Property be mailed to them at the addresses set forth in the first paragraph of this Deed of Trust.

21. **ATTORNEY FEES AND EXPENSES; FAILURE OF TRUSTOR TO VACATE.** If any sale, proceeding, lawsuit or arbitration is commenced, or any attorney is retained to collect any amounts secured hereby or to enforce any rights granted Beneficiary hereunder (regardless of whether an action is actually commenced), Trustor shall pay Beneficiary's reasonable attorney fees and costs (to be determined by the court or arbitrator and not by jury, in the case of litigation or arbitration) incurred in enforcing its rights under the Note, this Deed of Trust and Beneficiary's other Loan Documents, any guaranty now or hereafter relating to the Obligations and any other agreements which

evidence, secure or guarantee all or any portion of the Obligations, and Trustee's reasonable attorney fees, Trustee's fees and its costs and expenses in connection with any sale proceedings or lawsuit. All of the foregoing fees and expenses shall be payable on demand, shall incur interest immediately from the moment incurred by Trustee or Beneficiary at the rate of interest applicable under the Note, added to the Obligations and secured by this Deed of Trust, shall be included in any judgment or arbitration award obtained by Beneficiary and shall be paid to Beneficiary as part of any reinstatement tendered hereunder. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligations.

22. **EFFECT OF FORECLOSURE ON EXISTING LEASES.** Upon any sale of the Property under this Deed of Trust the purchaser may elect to treat any Lease that is subordinate to the lien of this Deed of Trust as terminated by virtue of the sale under the prior lien and charge of this Deed of Trust.

23. **ACCEPTANCE OF TRUST; TRUSTEE RESIGNATION; NOTIFICATION OF SALE.** Trustee accepts the trust created hereby, which shall be irrevocable by Trustor, when this Deed of Trust, executed and acknowledged, is recorded as provided by law. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party, unless brought by Trustee.

24. **SUCCESSOR TRUSTEE.** Beneficiary may, from time to time, by instrument in writing, designate a successor or successors to any Trustee named herein or acting hereunder, in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the predecessor Trustee, succeed to all its title.

25. **ADDITIONAL SECURITY.** The taking or acceptance of this Deed of Trust by Beneficiary shall in no event be considered to constitute a waiver of, or in any way affect or impair, any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the Obligations, nor shall the taking at any time by Beneficiary of any such additional security be construed to constitute a waiver of, or in any way affect or impair, the security of this Deed of Trust. Beneficiary may resort to its several securities for the payment of the Obligations in such order and manner as it may deem appropriate. Trustor, and any party hereafter claiming an interest in any portion of the Property by or through Trustor (other than Beneficiary), hereby waive any benefits under the doctrine of marshaling in the event of judicial or nonjudicial foreclosure under this Deed of Trust.

26. **CONSTRUCTION OF AGREEMENT; DEFINITIONS.** This Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of paragraphs in this Deed of Trust are for convenience and reference only, and in no way define or limit the scope or intent of this Deed of Trust or the provisions of such paragraphs. This Deed of Trust shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice or deliberately chosen not to be so represented, in the negotiation of this Deed of Trust, neither this Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Deed of Trust as a whole rather than to any

particular paragraph; (c) "person" includes a corporation, trust, partnership, limited liability company, association, governmental authority or other entity, as well as a natural person; (d) "Beneficiary" shall mean the holder at any time, including pledgees, of the Note or other writings secured hereby, whether or not named as Beneficiary herein; and (e) "Trustor" shall include all persons or entities named in this Deed of Trust as Trustors, severally and collectively, and any subsequent owner of all or any portion of the Property, and their liability under this Deed of Trust shall be joint and several (however, the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof).

27. TIME OF THE ESSENCE; SUCCESSORS AND ASSIGNS. Time is of the essence hereof. Without limitation of the restrictions on transfer described herein, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, personal representatives, legatees, devisees, successors and assigns.

28. GOVERNING LAW. This Deed of Trust is delivered in, relates to real property and personal property located in, and shall be governed by and construed according to the substantive laws and judicial decisions of the State of Utah (regardless of Utah conflict of laws principles or the location, residence, domicile or place of business of Trustor or any constituent principal thereof) and applicable federal laws, rules and regulations.

29. NOTICES. Except as provided herein with respect to Trustee's exercise of the power of sale contained herein or as otherwise required by law, all notices required or permitted to be given hereunder shall be given at the addresses specified in the first paragraph of this Deed of Trust.

30. AMENDMENT. This Deed of Trust may not be amended or changed except by a written agreement signed by Trustor and Beneficiary. The signature of the Trustee shall not be necessary to modify the terms of this Deed of Trust.

31. SEVERABILITY; ENFORCEABILITY. Each covenant, provision and condition of this Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein. Should this instrument be or ever become ineffective as a deed of trust, then it shall be construed and enforceable as a realty mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

32. SUBROGATION. Beneficiary shall be subrogated to the rights and lien, whether or not released of record, of the owner or holder of each and every encumbrance or lien paid from the proceeds of the loan or advances secured hereby, and such loan or advances have been or will be advanced, if at all, at Trustor's request.

33. NO SETOFF. All sums comprising the Obligations payable by Trustor shall be paid without notice, demand, setoff, deduction, counterclaim, defense, abatement, suspension, diminution or reduction. Trustor's obligation to do so shall not be released, discharged or otherwise diminished by reason of: (i) any damage to or destruction of, or any condemnation or similar taking of, the Property or any portion thereof; (ii) any restriction or prevention of, or interference with, the use of the Property or any portion thereof; (iii) any title defect or encumbrance, or any eviction from the Property or any portion thereof by the holder of superior title or otherwise; (iv) any bankruptcy,

insolvency, reorganization, composition, dissolution, liquidation or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor or Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor may now or in the future have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or any other loan document with Trustor; or (vii) any other similar or dissimilar occurrence. Beneficiary's acceptance of any payment in an amount less than the amount then due and owing under the Loan Documents shall be deemed an acceptance on account only, and shall not in any way constitute an accord and satisfaction or a waiver, or impair Beneficiary's ability to treat an Event of Default as continuing to exist.

34. NO MERGER. If the interests of Trustor under this Deed of Trust shall at any time become vested in Beneficiary, by reason of voluntary transfer or otherwise, the lien of this Deed of Trust shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates, unless otherwise consented to in writing by Beneficiary.

35. INTEREST RATE. All Obligations and/or other amounts arising or coming due under this Deed of Trust shall bear interest at the rate of interest specified in the Note.

36. MULTIPLE ADVANCES. The proceeds of the Obligations may be advanced in multiple installments at different times subsequent to the recordation of this Deed of Trust. Each advance made subsequent to the initial advance (which initial advance is made approximately concurrently with the recordation of this Deed of Trust) shall be secured in the same lien priority position as the initial advance. If for any reason a court of competent jurisdiction should determine the foregoing sentence to be unenforceable, then all amounts advanced by Beneficiary as of the time that a third party acquires or provides notice of (whichever action such court may require) an interest in the property encumbered by this Deed of Trust shall continue to be secured in a second priority lien position, and amounts advanced by Beneficiary after the acquisition or giving notice (as applicable) the intervening interest (except for amounts determined by the court to be senior to the intervening interest, even though advanced by Beneficiary after the recordation or giving notice of the intervening interest) shall be secured in a position junior to the intervening interest. The foregoing sentence shall not be construed to permit any person or entity to acquire an intervening interest without Beneficiary's consent, to acknowledge that any or all of the secured obligation will be subordinate to intervening interests, or to excuse any party that may obtain an intervening interest from complying with the requirements of applicable law for giving actual notice to Beneficiary or for taking other necessary measures to establish its lien priority over subsequently advanced amounts, and the holder of any intervening interest will be charged with notice of the provisions of this paragraph to the fullest extent allowed by law. Rather, the intent of this paragraph is to ensure that in no circumstance will the provisions of this Deed of Trust securing other and subsequent advances in the same lien priority as the initial advance hereunder impair or adversely affect the priority that Beneficiary would have had absent those provisions.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first set forth above.

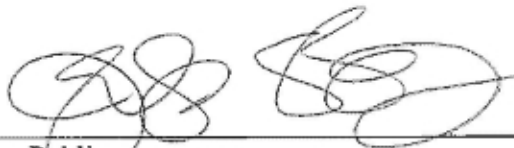
EASTBENCH RE, LLC,  
a Utah Limited Liability Company



By:  
Kenneth Truman Thomson  
Its Manager and an authorized signatory

STATE OF UTAH            )  
                                  :SS.  
COUNTY OF Wasch    )

The foregoing instrument was acknowledged before me this 7th day of February, 2020 by Kenneth Truman Thomson who duly acknowledged and provided evidences satisfactory to me of his/her identity [and his/her authority to execute this instrument on behalf of Trustor.



Notary Public

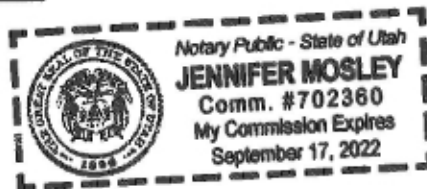


EXHIBIT A: LEGAL DESCRIPTION

All of Lot 80, SKYPARK INDUSTRIAL PARK, according to the Official Plat thereof, recorded in the office of the County Recorder of Davis County, State of Utah.