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E# 3283325 PG 1 OF 17  
Leann H. Kilts, WEBER COUNTY RECORDER  
12-May-23 0401 PM FEE \$40.00 DEP SLV  
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

PREPARED FOR OR BY AND UPON  
RECORDATION RETURN TO:

Adam J. Greene, Esq.  
McGuireWoods LLP  
201 North Tryon Street, Suite 3000  
Charlotte, North Carolina 28202

Parcel ID: 17-452-0024

*167597-CAF*

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**SHINY SHELL – PLEASANT VIEW, LLC, as trustor**

to

**COTTONWOOD TITLE INSURANCE AGENCY, INC., as trustee**

for the benefit of

**FIFTH THIRD BANK, NATIONAL ASSOCIATION, as beneficiary**

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

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Dated: As of May 11, 2023

Location: 390 W 2700 N, Pleasant View, UT 84404

County: Weber

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**THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Deed of Trust") is made as of May 11, 2023, by **SHINY SHELL – PLEASANT VIEW, LLC**, a Utah limited liability company with a mailing address at c/o Coldwater Capital, LLC, 3135 Richmond Street, Salt Lake City, Utah 84106 (together with its permitted successors and assigns, "Trustor") to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation with a mailing address at 1996 East 6400 South, Suite 120, Murray, UT 84121 (together with its successors and assigns, "Trustee") for the benefit of **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, a national banking association with a mailing address at 3344 Peachtree Road NE Suite 1000, Maildrop: x46306, Atlanta, Georgia 30326 (together with its successors and assigns, "Beneficiary").

#### RECITALS:

**WHEREAS**, Beneficiary is making a certain loans and other extensions of credit available to SHINY SHELL FIFTY THREE INTERMEDIATE, LLC, a Utah limited liability company ("Borrower") in the maximum principal amount of up to \$35,000,000.00 (collectively, the "Loan"), advanced pursuant to the terms and conditions of a certain Loan Agreement, dated as of May 20, 2022, by and between Borrower and Beneficiary (as the same may have been or may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement"), which Loan is evidenced by, among other things, one or more promissory notes executed in connection with the Loan Agreement (each together with all extensions, renewals, replacements, restatements or other modifications thereof, whether one or more being hereinafter collectively referred to as the "Note"); all capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Loan Agreement;

**WHEREAS**, pursuant to the terms of that certain Affiliate Guaranty Agreement, dated as of May 20, 2022 (the "Guaranty"), Trustor is obligated, together with certain other affiliates of Borrower party to the Guaranty (together with Trustor, collectively, the "Guarantors"), to guaranty the Guarantor's Obligations (as defined in the Guaranty) including, without limitation, the full payment and performance of the amounts and obligations of Borrower and the Guarantors set forth in, and described in, the Loan Agreement, the Guaranty, the Note, and the other Loan Documents (defined below), together with all interest accrued and unpaid thereon and all other sums due to Beneficiary in respect of the Loan under this Deed of Trust or any of the other Loan Documents (defined below) and all Rate Management Obligations under any Rate Management Agreement (collectively, the "Debt"), and the performance of all of the obligations required of Borrower and Guarantors under the Note, the Guaranty, the Loan Agreement, and all other documents, agreements, and certificates that are executed or delivered in connection with or contemplated by, or that otherwise pertain to, the Loan (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, collectively, the "Loan Documents"); and

**WHEREAS**, Borrower may from time to time enter into one or more Rate Management Agreements with Beneficiary or an affiliate of Beneficiary (each, an "Affiliate Counterparty"), and Beneficiary or Affiliate Counterparty will require, as a condition to the entry into any Rate Management Agreements, that Trustor shall have executed and delivered this Deed of Trust for the benefit of Beneficiary, for itself and as agent for any such Affiliate Counterparty;

**NOW THEREFORE**, in consideration of the making and maintaining of the Loan and the entry into any Rate Management Obligations, and the covenants, agreements, representations and warranties set forth in this Deed of Trust, the parties hereto hereby agree as follows:

#### Article 1 – GRANTS OF SECURITY

**Section 1.1. PROPERTY MORTGAGED.** Trustor does hereby absolutely, irrevocably, and unconditionally mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, convey, and grant a security interest to Trustee, its successors and assigns, for the benefit of Beneficiary and its successors and assigns, in and to the

following property, rights, interests, and estates of Trustor, whether now owned or hereafter acquired by Trustor (collectively, the "Property");

(a) LAND. The real property described in Exhibit A attached hereto and made a part hereof (collectively, the "Land");

(b) ADDITIONAL LAND. All additional lands, estates, and development rights hereafter acquired by Trustor for use in connection with the Land and the development of the Land, and all additional lands and estates therein that may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the lien of this Deed of Trust;

(c) IMPROVEMENTS. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements, and improvements (including tenant improvements) now or hereafter erected or located on the Land (collectively, the "Improvements" and, together with the Land, collectively, the "Premises");

(d) EASEMENTS. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements, and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Trustor of, in and to the Land and the Improvements, and every part and parcel thereof, with the appurtenances thereto;

(e) FIXTURES AND PERSONAL PROPERTY. All machinery, equipment, appliances, fixtures (including all heating, air conditioning, plumbing, lighting, communications, and elevator fixtures), and furniture, together with all software used in or to operate any of the foregoing, and all other property of every kind and nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and all building or construction equipment, materials, and supplies of any nature whatsoever intended for construction, reconstruction, alteration, or repair of (or installation at) the Premises, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title, and interest of Trustor in and to any of the Personal Property that may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where such Personal Property is located (as applicable, the "Uniform Commercial Code"), and all proceeds and products of the above;

(f) LEASES AND RENTS. All leases, subleases, subsubleases, lettings, licenses, concessions, or other agreements (whether written or oral) pursuant to which any Person (each, a "Tenant") is granted a possessory interest in, or right to use or occupy all or any portion of, the Land and the Improvements, and every modification, amendment, or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements, and every guarantee of the performance and observance of the covenants, conditions, and agreements to be performed and observed by any such Person, heretofore or hereafter entered into, whether before or after the filing by or against Trustor of any petition for relief under any Debtor Relief Laws (collectively, the "Leases") and all right, title, and interest of Trustor (and its successors and assigns) therein and thereunder, including cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Trustor or its agents or employees from any and

all sources arising from or attributable to the Property, including, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Trustor and proceeds, if any, from business interruption or other loss of income insurance whether paid or accruing before or after the filing by or against Trustor of any petition for relief under any Debtor Relief Laws (collectively, the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) INSURANCE PROCEEDS. All insurance proceeds in respect of the Property under any insurance policies covering any of the Property, whether or not such insurance policies are required by Beneficiary, together with any interest thereon, and including the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property (collectively, the “Insurance Proceeds”);

(h) CONDEMNATION AWARDS. All condemnation awards, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of condemnation, or other compensation, including interest thereon, that may heretofore or hereafter be made with respect to the Property (each, a “Condemnation Award”) by reason of any taking or condemnation, whether from the exercise of the right of eminent domain (including any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property, whether temporary or permanent, by any Governmental Authority or any other Person acting under or for the benefit of a Governmental Authority (each, a “Condemnation”);

(i) TAX CERTIORARI. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) RIGHTS. The right, in the name and on behalf of Trustor, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Beneficiary in the Property;

(k) AGREEMENTS. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Trustor therein and thereunder, including the right, upon the happening of any Event of Default hereunder, to receive and collect any sums payable to Trustor thereunder (collectively, the “Contracts”);

(l) INTANGIBLES. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(m) ACCOUNTS. All reserves, escrows and deposit accounts maintained by Trustor with respect to the Property, including all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(n) INTEREST RATE HEDGING AGREEMENTS. The Rate Management Agreements, including, but not limited to, all “accounts”, “chattel paper”, “general intangibles” and “investment property” (as such terms are defined in the Uniform Commercial Code) constituting or relating to the foregoing;

(o) PROCEEDS. All proceeds of any of the foregoing items set forth in subsections (a) through (n) including Insurance Proceeds and Condemnation Awards, into cash or liquidation claims; and

(p) OTHER RIGHTS. Any and all other rights of Trustor in and to the items set forth in subsections (a) through (o) above.

**Section 1.2. ASSIGNMENT OF RENTS.** Trustor hereby absolutely and unconditionally assigns to Beneficiary and Trustee all of Trustor's right, title and interest in and to all current and future Leases and Rents; it being intended by Trustor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Loan Agreement and Section 9.1(h) of this Deed of Trust, Beneficiary grants to Trustor a revocable license to (i) collect, receive, use and enjoy the Rents and Trustor shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums, and (ii) enforce the terms of the Leases.

**Section 1.3. SECURITY AGREEMENT.** This Deed of Trust is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The "Property" includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Trustor in the Property. By executing and delivering this Deed of Trust, Trustor hereby grants to Beneficiary, as security for the Obligations (hereinafter defined), a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code.

**Section 1.4. FIXTURE FILING.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Deed of Trust, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5. CONDITIONS TO GRANT.** TO HAVE AND TO HOLD the above granted and described Property unto Trustee for and on behalf of Beneficiary and to the use and benefit of Beneficiary and Trustee and their successors and assigns, forever; IN TRUST, WITH POWER OF SALE, to secure payment to Beneficiary of the Debt and performance by Trustor of all other Obligations at the time and in the manner provided for its payment in the Note, the Guaranty, and the Loan Agreement; PROVIDED, HOWEVER, these presents are upon the express condition that, if Beneficiary shall be well and truly paid the Debt at the time and in the manner provided in the Note, the Guaranty, the Loan Agreement, and this Deed of Trust, if Trustor shall well and truly perform the Other Obligations as set forth in this Deed of Trust, and if Trustor shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Guaranty, the Loan Agreement and the other Loan Documents, then these presents and the estate hereby granted shall cease, terminate and be void.

## Article 2 – DEBT AND OBLIGATIONS SECURED

**Section 2.1. DEBT AND OTHER OBLIGATIONS.** This Deed of Trust and the grants, assignments and transfers made in Article 1 are given for the purpose of securing payment in full of the Debt and the full and prompt performance of (a) all other obligations of Trustor contained herein, (b) each obligation of Trustor contained in the Loan Agreement and any other Loan Document, and (c) each obligation of Trustor contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Guaranty, the Loan Agreement or any other Loan Document (collectively, the "Other Obligations"). The Debt and the Other Obligations are referred-to collectively herein as the "Obligations".

**Section 2.2. PAYMENT OF DEBT.** Trustor will pay and perform the Debt and perform the Other Obligations at the times and in the manner provided in the Loan Agreement, the Note, the Guaranty, and this Deed of Trust.

## Article 3 – INSURANCE; CASUALTY AND CONDEMNATION

**Section 3.1. INSURANCE, CASUALTY AND CONDEMNATION.**

(a) Trustor shall maintain, or cause to be maintained, such policies of insurance as required by Beneficiary in accordance with the terms of the Loan Agreement.

(b) In the event of a casualty event as described in Section 6.15 of the Loan Agreement, Trustor shall cooperate fully with Borrower and Beneficiary to cause compliance with the terms of the Loan Agreement.

(c) In the event of a condemnation event as described in Section 6.16 of the Loan Agreement, Trustor shall cooperate fully with Borrower and Beneficiary to cause compliance with the terms of the Loan Agreement.

#### Article 4 – OTHER PROPERTY COVENANTS

Trustor further covenants and agrees that:

**Section 4.1. INTENTIONALLY OMITTED.**

**Section 4.2. TAXES AND OTHER CHARGES.** Trustor shall promptly pay all real estate and personal property taxes, all other Taxes, and all ground rents, maintenance charges, impositions (other than Taxes), and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property (collectively, "Other Charges"), now or hereafter levied or assessed or imposed against the Property, in accordance with the Loan Agreement.

**Section 4.3. LEASES AND CONTRACTS.** Trustor shall not (and shall not permit any other Person to) enter into any Leases affecting the Property.

**Section 4.4. WARRANTY OF TITLE.** Trustor has good, indefeasible, marketable, and insurable title to the Property, and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, and convey the same. Trustor possesses an unencumbered fee simple absolute estate in the Land and the Improvements except for Permitted Encumbrances. This Deed of Trust, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (x) a legal, valid, and perfected first priority lien on the Property, subject only to Permitted Encumbrances and (y) legal, valid, and perfected first priority security interests in and to, and legal, valid, and perfected collateral assignments of, the Personal Property and the Leases, all in accordance with the terms thereof, in each case subject only to Permitted Encumbrances. Trustor shall forever warrant, defend, and preserve the title and the validity and priority of the lien of this Deed of Trust and shall forever warrant and defend the same to Beneficiary against the claims of all Persons whomsoever, except for Permitted Encumbrances.

**Section 4.5. PAYMENT FOR LABOR AND MATERIALS.** Subject to Trustor's right to contest any Work Charge (defined herein) pursuant to the terms of the Loan Agreement, Trustor will promptly pay (or cause to be paid) when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property (each, a "Work Charge") and never permit to exist beyond the due date thereof in respect of the Property any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property any other or additional lien or security interest other than Permitted Encumbrances. Trustor represents there are no claims for payment for work, labor, or materials affecting the Property that are or may become a lien prior to, or of equal priority with, the liens created by the Loan Documents, other than those that will be paid by Trustor in the ordinary course of business pursuant to the terms of the Loan Agreement.

**Section 4.6. OPERATION, CARE AND INSPECTION OF PREMISES.** Trustor shall operate the Premises at all times as a commercial car wash, with necessary or desirable ancillary uses. Trustor shall maintain the Premises in good condition and repair, shall not commit or suffer any material waste to the Premises in any material respect or do or suffer to be done anything which would increase the risk of casualty to the Premises, or any part thereof, or which would result in the cancellation of any insurance policy carried with respect to the Premises. Trustor shall

comply promptly with all applicable laws, rules, ordinances, regulations, judgments, governmental determinations, restrictive covenants and easements affecting the Premises, or any part thereof (the “Requirements”), and shall cause the Premises to comply at all times and in all respects with all Requirements, and shall at all times operate the Premises, and perform any construction of any portion thereof, in all respects in accordance with all Requirements. Trustor shall promptly repair, restore or replace, to the extent and in a manner satisfactory to Beneficiary, any equipment or personal property that may become obsolete, damaged or destroyed. Beneficiary and any persons authorized by Beneficiary shall have the right at all reasonable times to inspect the Premises, any improvements existing or being constructed thereon and all materials used or to be used in such improvements; provided, however, that nothing contained herein shall be deemed to impose upon Beneficiary any obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect, which was or might have been disclosed by such inspections. Notwithstanding anything to the contrary herein, no part of the Premises now or hereafter conveyed as security under this Deed of Trust shall be removed, demolished, or materially altered.

### **Article 5 – FURTHER ASSURANCES**

**Section 5.1. COMPLIANCE WITH LOAN AGREEMENT.** Trustor shall comply with all covenants set forth in the Loan Agreement relating to acts or other further assurances to be made on the part of Trustor in order to protect and perfect the lien or security interest hereof upon, and in the interest of Beneficiary in, the Property. Without limiting the foregoing, Trustor agrees to deliver to Beneficiary from time to time upon Beneficiary’s request such consents to the foregoing assignment from parties contracting with Trustor as Beneficiary may require.

**Section 5.2. AUTHORIZATION TO FILE FINANCING STATEMENTS; POWER OF ATTORNEY.** Trustor hereby authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments, and continuation statements as authorized by Applicable Law, as applicable to all or part of the Personal Property and as necessary or required by Beneficiary in connection herewith. For purposes of such filings, Trustor agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any initial financing statements, amendments, or continuation statements, if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in Trustor’s own name to execute in Trustor’s name any such documents and otherwise to carry out the purposes of this Section 5.2, to the extent that Trustor’s authorization above is not sufficient and Trustor fails or refuses to promptly execute such documents. To the extent permitted by Law, Trustor hereby ratifies all acts that said attorneys-in-fact have lawfully done in the past or lawfully do or cause to be done in the future pursuant to this Section 5.2. This power of attorney is a power coupled with an interest and shall be irrevocable.

### **Article 6 – DUE ON SALE/ENCUMBRANCE**

**Section 6.1. NO SALE/ENCUMBRANCE.** Except in accordance with the express terms and conditions contained in the Loan Agreement, Trustor shall not cause or permit a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or grant of any options with respect to, or any other transfer or disposition (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of a legal or beneficial interest in the Property, Trustor, any constituent owner or other holder of a direct or indirect equity interest in Trustor, any indemnitor or other guarantor of the Loan, any constituent owner or other holder of a direct or indirect equity interest in such indemnitor or guarantor, any manager or operating lessee of the Property that is affiliated with Trustor or any constituent owner or other holder of a direct or indirect equity interest in such manager or such operating lessee.

**Article 7 – PREPAYMENT; RELEASE OF PROPERTY**

**Section 7.1. PREPAYMENT.** The Debt may be prepaid, in part or in whole, only in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

**Section 7.2. RELEASE OF PROPERTY.** Trustor shall not be entitled to a release of Property from the lien of this Deed of Trust except in accordance with terms and conditions of the Loan Agreement.

**Article 8 – DEFAULT**

**Section 8.1. EVENT OF DEFAULT.** The term “Event of Default” as used in this Deed of Trust shall have the meaning assigned to such term in the Loan Agreement.

**Article 9 – RIGHTS AND REMEDIES UPON DEFAULT**

**Section 9.1. REMEDIES.** Upon the occurrence and during the continuance of any Event of Default, Trustor agrees that Beneficiary may, or acting by or through Trustee may, take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor or its rights in and to the Property, including the following actions, without impairing or otherwise affecting the other rights and remedies of Beneficiary or Trustee; each of the following actions may be pursued concurrently or otherwise, at such time and in such order as Beneficiary or Trustee may determine:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Deed of Trust under any applicable provision of Law, in which case the Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Deed of Trust for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Deed of Trust for the remaining balance of the Debt, which shall remain unimpaired and without loss of priority;
- (d) sell the Property, for cash or upon credit, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, and upon such terms and after such notice thereof, as may be required or permitted by Law;
- (e) institute an action, suit, or proceeding in equity for the specific performance of any covenant, condition, or agreement contained in this Deed of Trust or in any other Loan Document;
- (f) recover judgment on the Note or the Guaranty, either before, during, or after any proceedings for the enforcement of this Deed of Trust or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator, or conservator of the Property, without notice to Trustor (which notice Trustor expressly waives), without regard for the adequacy of the security for the Debt, and without regard for the solvency of Trustor, any guarantor or indemnitor under the Loan, or any other Person liable for the payment of the Debt, and Trustor expressly consents to such appointment, and to such receiver, trustee, liquidator, or conservator taking of possession of the Property, operating the Property, collecting the Rents, and otherwise protecting and preserving the Property;
- (h) the license granted to Trustor under Section 1.2 hereof shall, at Beneficiary’s option, automatically be revoked, and Beneficiary may enter into or upon the Property, either personally or by its agents, nominees, or attorneys, and dispossess Trustor and its agents and servants therefrom, without liability for trespass, damages, or



otherwise and exclude Trustor and its agents or servants wholly therefrom, and take possession of all books, records, and accounts relating thereto, and Trustor agrees to surrender possession of the Property and of such books, records, and accounts to Beneficiary upon demand and, thereupon and thereafter, Beneficiary may (i) use, operate, manage, control, insure, maintain, repair, restore, and otherwise deal with the Property and conduct business thereat; (ii) complete any construction on the Property in such manner and form as Beneficiary deems advisable; (iii) make alterations, additions, renewals, replacements, and improvements to or on the Property; (iv) exercise all rights and powers of Trustor with respect to the Property, whether in the name of Trustor or otherwise, including the right to make, cancel, enforce, or modify Leases, obtain and evict tenants, and demand, sue for, collect, and receive all Rents of the Property and every part thereof; (v) require Trustor to pay monthly in advance to Beneficiary, or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any part of the Property occupied by Trustor; (vi) require Trustor to vacate and surrender possession of the Property to Beneficiary or to such receiver and, if Trustor fails to do so, Trustor may be evicted by summary proceedings or otherwise; and (vii) apply any or all receipts from the Property in accordance with the terms of Section 9.2;

(i) apply any sums then deposited or held in escrow or otherwise by or on behalf of Beneficiary in accordance with the terms of this Deed of Trust or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) insurance premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Loan; (v) all other sums payable pursuant to this Deed of Trust or any other Loan Document, including any advances made by Beneficiary pursuant thereto;

(j) surrender any or all of the insurance policies maintained (or required to be maintained) by Trustor, collect the unearned insurance premiums for such insurance policies, and apply such sums as a credit on the Debt in such priority and proportion as Beneficiary in its discretion shall deem proper, and Trustor hereby appoints Beneficiary as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for the purpose of effectuating the foregoing;

(k) apply the undisbursed balance of any deposit made by Trustor with Beneficiary in connection with the Restoration of the Property after a casualty thereto or Condemnation, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Beneficiary shall deem to be appropriate in its discretion; or

(l) pursue such other remedies as Beneficiary may have under Applicable Law.

In the event of a sale (by foreclosure, power of sale, or otherwise) of less than all of the Property, this Deed of Trust shall continue as a lien and security interest on the remaining portion of the Property, unimpaired and without loss of priority. Notwithstanding any provision of this Section to the contrary, if an Event of Default as described in Section 8.1(f) of the Loan Agreement occurs, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand, or other action by Beneficiary.

**Section 9.2. APPLICATION OF PROCEEDS.** The purchase money, proceeds, and avails of any disposition of the Property, any receipts from the Property, and any other sums collected by Beneficiary pursuant to this Deed of Trust or any other Loan Document shall be applied by Beneficiary in accordance with the terms of the Note.

**Section 9.3. RIGHT TO CURE DEFAULTS.** Upon the occurrence and during the continuance of any Event of Default, Beneficiary may, but without any obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligation hereunder, make any payment or do any act required of Trustor hereunder in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof. Beneficiary or Trustee is authorized to (a) enter upon the Property for such purposes, (b) appear in, defend, or bring any action or proceeding to protect its interest in the Property, (c) foreclose this Deed of Trust, or (d) collect the Debt and, in each case, the cost and expense thereof (including reasonable attorneys' fees), with interest as provided

in this Section 9.3, shall be due and payable to Beneficiary upon demand and shall bear interest at the Default Rate. All such costs and expenses incurred by Beneficiary or Trustee, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Debt and be secured by this Deed of Trust and the other Loan Documents, and shall be immediately due and payable upon demand by Beneficiary therefor.

**Section 9.4. ACTIONS AND PROCEEDINGS.** Beneficiary or Trustee has the right (a) to appear in and defend any action or proceeding brought with respect to the Property and (b) to bring any action or proceeding, in the name and on behalf of Trustor, that Beneficiary, in its discretion, decides should be brought to protect its interest in the Property.

**Section 9.5. RECOVERY OF SUMS REQUIRED TO BE PAID.** Beneficiary shall have the right from time to time to take action to recover any sum or sums that constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt is then due, and without prejudice to the right of Beneficiary thereafter to bring an action of foreclosure (or any other action) for a default or defaults by Trustor existing at the time such earlier action was commenced.

**Section 9.6. OTHER RIGHTS, ETC.** (a) The failure of Beneficiary or Trustee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Deed of Trust. Trustor shall not be relieved of Trustor's obligations hereunder by reason of (i) the failure of Beneficiary or Trustee to comply with any request of Trustor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Deed of Trust or otherwise enforce any of the provisions hereof or of the Note, the Guaranty, or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Beneficiary extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Guaranty, this Deed of Trust or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Trustor, and Beneficiary shall have no liability whatsoever for decline in the value of the Property, for failure to maintain the insurance policies required to be maintained pursuant to the Loan Agreement, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Beneficiary shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Beneficiary's possession.

(c) Beneficiary may resort for the payment of the Debt to any other security held by Beneficiary in such order and manner as Beneficiary, in its discretion, may elect. Beneficiary or Trustee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Beneficiary or Trustee thereafter to foreclose this Deed of Trust. The rights of Beneficiary or Trustee under this Deed of Trust shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Beneficiary or Trustee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Neither Beneficiary nor Trustee shall be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(d) Beneficiary shall have the right at any time (but shall have no obligation) to take in its name or in the name of Trustor such action as Beneficiary may determine to be desirable to cure any default with respect to the Leases or any of the other Contracts, or to protect the rights of Trustor or Beneficiary with respect thereto. Trustor irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, which power of attorney is irrevocable and coupled with an interest to enforce in Trustor's name or in the name of beneficiary all rights of Trustor with respect to the Leases and each of the other Contracts. Beneficiary shall incur no liability if any *bona fide* action so taken by it or on its behalf shall prove to be inadequate or invalid.

**Section 9.7. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY.** Beneficiary may release any portion of the Property for such consideration as Beneficiary may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Deed of Trust, or improving the position of

any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Beneficiary for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Beneficiary may require without being accountable for so doing to any other lienholder. This Deed of Trust shall continue as a lien and security interest in the remaining portion of the Property.

**Section 9.8. RIGHT OF ENTRY.** Upon reasonable notice to Trustor, Beneficiary and its agents shall have the right to enter and inspect the Property at all reasonable times.

**Section 9.9. BANKRUPTCY.** (a) Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the right to proceed in its own name or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including the right to file and prosecute, to the exclusion of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code of the United States of America (the "Bankruptcy Code").

(b) If there shall be filed by or against Trustor a petition under the Bankruptcy Code and Trustor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Trustor shall give Beneficiary not less than ten (10) days' prior notice of the date on which Trustor shall apply to the bankruptcy court for authority to reject such Lease. Beneficiary shall have the right, but not the obligation, to serve upon Trustor within such ten-day period a notice stating that (i) Beneficiary demands that Trustor assume and assign the Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code and (ii) Beneficiary covenants to cure or provide adequate assurance of future performance under the Lease. If Beneficiary serves upon Trustor the notice described in the preceding sentence, Trustor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Beneficiary of the covenant provided for in clause (ii) of the preceding sentence.

**Section 9.10. SUBROGATION.** If any or all of the proceeds of the Loan have been used to extinguish, extend, or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Beneficiary shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt and the performance and discharge of the Other Obligations.

## **Article 10 – ENVIRONMENTAL HAZARDS**

**Section 10.1. ENVIRONMENTAL COVENANTS.** Trustor has provided representations, warranties, and covenants regarding environmental matters set forth in the Environmental Indemnity, and Trustor hereby confirms that it will comply with the aforesaid covenants regarding environmental matters.

## **Article 11 – WAIVERS**

**Section 11.1. WAIVERS OF RIGHTS.** To the fullest extent permitted by Applicable Law, Trustor hereby waives any and all benefit of applicable law regarding (a) appraisal, valuation, stay, extension, reinstatement, or marshalling in the event of any sale of the Property, (b) redemption from sale under any order or decree of foreclosure of this Deed of Trust, and (c) notices of any nature whatsoever from Beneficiary or Trustee, except for notices that are specifically required by the express terms of this Deed of Trust or another Loan Document.

**Section 11.2. SOLE DISCRETION OF BENEFICIARY.** Unless otherwise expressly herein provided, whenever Beneficiary exercises any right given to it to approve or disapprove, or any arrangement or term is to be

satisfactory to Beneficiary, the decision of Beneficiary to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Beneficiary, and shall be final and conclusive.

**Section 11.3. WAIVER OF TRIAL BY JURY. TRUSTOR AND BENEFICIARY EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT NOW OR HEREAFTER EXISTS WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM, OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY TRUSTOR AND BENEFICIARY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF BENEFICIARY AND TRUSTOR IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY TRUSTOR AND BENEFICIARY.**

**Section 11.4. WAIVER OF FORECLOSURE DEFENSE.** Trustor hereby waives any defense Trustor might assert or have by reason of Beneficiary's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Beneficiary.

**Article 12 – NOTICES**

**Section 12.1. NOTICES.** All notices or other communications to Trustor or Beneficiary hereunder shall be delivered in accordance with the applicable terms and conditions of Section 14.2 of the Loan Agreement.

Notices to the Trustee shall be sent as follows:

Cottonwood Title Insurance Agency, Inc.  
1996 East 6400 South, Suite 120  
Murray, UT 84121  
Phone: (801) 277-9999

**Article 13 – APPLICABLE LAW**

**Section 13.1. GOVERNING LAW.** This Deed of Trust shall be governed, interpreted, construed, applied, and enforced in accordance with the laws of the State of Utah (without giving effect to such state's conflict of law principles), and the Applicable Laws of the United States of America.

**Section 13.2. PROVISIONS SUBJECT TO APPLICABLE LAW.** All rights, powers, and remedies provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of Law, and are intended to be limited to the extent necessary so that they will not render this Deed of Trust invalid, unenforceable, or not entitled to be recorded, registered, or filed under the provisions of any Applicable Law.

**Article 14 – MISCELLANEOUS PROVISIONS**

**Section 14.1. NO ORAL CHANGE.** This Deed of Trust may not be modified, amended, waived, extended, changed, discharged, or terminated orally or by any act or failure to act on the part of Trustor, Trustee, or Beneficiary, but only by an agreement in writing signed by Trustor and Beneficiary.

**Section 14.2. SUCCESSORS AND ASSIGNS.** This Deed of Trust shall be binding upon and inure to the benefit of Trustor, Beneficiary, and their respective successors and assigns forever.

**Section 14.3. INAPPLICABLE PROVISIONS.** If any term, covenant, or condition of this Deed of Trust or any other Loan Document is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof or of the other Loan Documents, and this Deed of Trust shall be construed as if such invalid, illegal, or unenforceable term, covenant, or condition had never been contained herein or therein.

**Section 14.4. HEADINGS, ETC.** The headings and captions of various Sections of this Deed of Trust are for convenience of reference only, and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 14.5. INTERPRETATION; OBLIGATIONS JOINT AND SEVERAL.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein: words used in this Deed of Trust may be used interchangeably in singular or plural form; the word "Beneficiary" means "Beneficiary and any of Beneficiary's successors and assigns"; the word "Note" means "the Note and any other evidence of indebtedness secured by this Deed of Trust"; the word "Trustee" means "Trustee and any substitute Trustee of the estates, properties, powers, trusts and rights conferred upon Trustee pursuant to this Deed of Trust"; the word "Property" means "all or any portion of the Property and any estate, claim, demand, right, title, or interest therein, and any rights of redemption thereof"; the word "or" means "and/or"; the word "including" means "including, without limitation"; the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal, and law clerk fees and disbursements, including fees and disbursements at the pre-trial, trial, and appellate levels, incurred or paid by Beneficiary in protecting its interest in the Property and enforcing its rights hereunder; and the word "Trustor" means "each Trustor and any subsequent owner or owners of the Property". If more than one Person has executed this Deed of Trust as "Trustor," the representations, warranties, covenants, and other obligations of all such Persons hereunder shall be joint and several.

**Section 14.6. ENTIRE AGREEMENT.** This Deed of Trust and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior written or oral agreements among or between such parties relating to such transactions are superseded by the terms of this Deed of Trust and the other Loan Documents.

**Section 14.7. LIMITATION ON BENEFICIARY'S RESPONSIBILITY.** No provision of this Deed of Trust shall operate to (a) place any obligation or liability for the control, care, management, or repair of the Property upon Beneficiary or (b) make Beneficiary responsible or liable for any waste committed on the Property by the tenants or any other Person, or 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 or injury or death to any tenant, licensee, employee, contractor, or stranger. Without limitation of the foregoing, nothing in this Deed of Trust shall be deemed to relieve Trustor from its obligations (including its obligations under the Leases and the Contracts), or to constitute an assumption by Beneficiary of any such obligation. Nothing herein contained shall be construed as constituting Beneficiary a "mortgagee in possession."

**Section 14.8. PRIORITY OF LOAN AND INTEREST RATE PROTECTION AGREEMENTS.** Notwithstanding anything to the contrary contained in this Deed of Trust, in the event that Trustor enters into a Rate Management Agreement with an Affiliate Counterparty at any point during the term, the sums secured hereby payable under the Note, the Guaranty, and the Loan Agreement and otherwise in respect of the Loan shall have equal priority with the Rate Management Obligations (if applicable) secured hereby.

**Section 14.9. INTEREST RATE PROTECTION BREAKAGE COSTS.** In the event that Trustor enters into a Rate Management Agreement with an Affiliate Counterparty at any point during the term, Trustor agrees that

Trustor shall be liable to Beneficiary and such Affiliate Counterparty for all Rate Management Obligations, and that the Rate Management Obligations are secured by the lien of this Deed of Trust.

### **Article 15 – DEED OF TRUST PROVISIONS**

**Section 15.1. CONCERNING THE TRUSTEE.** Trustee shall be under no duty to take any action hereunder except as expressly required hereunder or by Law, or to perform any act that would involve Trustee in any expense or liability, or to institute or defend any suit in respect hereof unless, in each case, properly indemnified to Trustee's reasonable satisfaction. Trustee, by acceptance of this Deed of Trust, represents that it is duly qualified to serve as Trustee hereunder, and covenants to perform and fulfill the trusts herein created, being liable, however, only for gross negligence or willful misconduct. Trustee may resign at any time upon giving thirty (30) days' notice to Trustor and Beneficiary. Beneficiary may remove Trustee at any time or from time to time and select a successor trustee. In the event of the death, removal, resignation, refusal to act, or inability to act of Trustee, or for any reason whatsoever Beneficiary may, without notice and without specifying any reason therefor, and without applying to any court, select and appoint a successor trustee, by an instrument recorded wherever this Deed of Trust is recorded, and all powers, rights, duties, and authority of Trustee, as aforesaid, shall thereupon become vested in such successor. Such substitute trustee shall not be required to give bond for the faithful performance of the duties of Trustee hereunder unless required by Beneficiary. The procedure provided in this paragraph for substitution of Trustee shall be in addition to, and not in exclusion of, any other provisions for substitution, by Law or otherwise.

**Section 15.2. TRUSTEE'S FEES.** Trustor shall pay all reasonable costs, fees, and expenses incurred by Trustee and Trustee's agents and counsel in connection with the performance by Trustee of its duties hereunder, and all such costs, fees, and expenses shall be secured by this Deed of Trust. Trustee hereby acknowledges and agrees that no fees or other compensation (statutory or otherwise) shall be payable to Trustee hereunder or otherwise in connection with the Loan, except for reasonable compensation (as determined by Beneficiary) in connection with (a) a sale of the Property in connection with an exercise of remedies hereunder or under the other Loan Documents or (b) a release hereof in accordance with the applicable terms and conditions hereof and of the other Loan Documents.

**Section 15.3. CERTAIN RIGHTS.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers granted in this Deed of Trust and to perform any duty hereunder, either directly or through Trustee's agents or attorneys, (iii) to select and employ, in and about the execution of Trustee's duties hereunder, suitable accountants, engineers, other experts, agents, and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such Person selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful actions as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting an action taken or proposed to be taken by Trustee hereunder, if believed by Trustee in good faith to be genuine.

**Section 15.4. RETENTION OF MONEY.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by Applicable Law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 15.5. SUCCESSION INSTRUMENTS.** Any substitute trustee appointed as Trustee pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all estates, properties, rights, powers, and trusts of such Person's predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, such predecessor Trustee shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all estates, properties, rights, powers, and trusts of such predecessor Trustee, and shall duly assign, transfer, and deliver any of the Property held by such predecessor Trustee to the substitute trustee so appointed in Trustee's place. Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee to more fully and certainly vest in and confirm to such Trustee such estates rights, powers, and duties, then, upon request by Trustee, any and all such deeds, conveyances, and instruments shall be made, executed, acknowledged, and delivered, and shall be caused to be recorded or filed by Trustor.

**Article 16 – INTENTIONALLY OMITTED**

**Article 17 – STATE-SPECIFIC PROVISIONS**

**Section 17.1. PRINCIPLES OF CONSTRUCTION.** In the event of any inconsistencies between the terms and conditions of this Article 17 and the terms and conditions of this Deed of Trust, the terms and conditions of this Article 17 shall control and be binding.

**Section 17.2. UTAH TRUST DEED AND UTAH UNIFORM ASSIGNMENT OF RENTS PROVISIONS.** Notwithstanding any other provision set forth herein or in the Loan Documents, Trustor's, Trustee's, and Beneficiary's rights, remedies, and obligations hereunder shall be governed by Utah Code Annotated Sections 57-1-1 *et seq.*, as amended from time to time. In addition, notwithstanding any other provision set forth herein or in the Loan documents and with respect to assignment of Rents and Leases set forth in Section 1.2 hereof, Trustor's and Beneficiary's rights, remedies, and obligations shall be governed by the Utah Uniform Assignments of Rents Act set forth in Utah Code Annotated Section 57-26-101 *et seq.*, as amended from time to time.

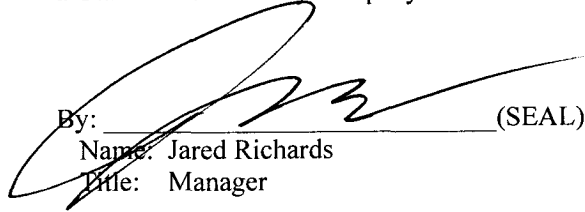
**Section 17.3. FINAL AGREEMENT.** PURSUANT TO *UTAH CODE ANNOTATED* § 25-5-4, TRUSTOR IS NOTIFIED THAT THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THAT THIS SECURITY INSTRUMENT, AS EXPRESSED IN THE LOAN DOCUMENTS, MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, this Security Instrument is executed, as a sealed instrument, as of the day and year first above written by the person or persons identified below on behalf of Trustor (and said person or persons hereby represent that they possess full power and authority to execute this instrument).

**TRUSTOR**

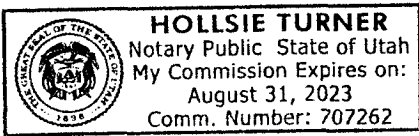
**SHINY SHELL – PLEASANT VIEW, LLC,**  
a Utah limited liability company

By:  (SEAL)  
Name: Jared Richards  
Title: Manager

**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  )SS.  
COUNTY OF SALT LAKE        )

On this 5<sup>th</sup> day of May, 2023, before me a Notary Public within and for said County and State, personally appeared JARED RICHARDS, to me personally known, who, being by me duly sworn did say that he is the MANAGER of SHINY SHELL – PLEASANT VIEW, LLC, the limited liability company named in the foregoing instrument, and that the instrument was signed on behalf of all members of the limited liability company, and JARED RICHARDS acknowledged the instrument to be the free act and deed of the limited liability company.



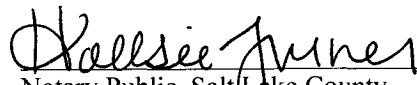
  
Notary Public, Salt Lake County  
My Commission expires 8/31/2023



EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

Lot 1, BAILEY'S 2700 NORTH P.U.D., according to the official plat thereof recorded December 9, 2022 as Entry No. 3266399 in Book 94 at Page 82 in the office of the Weber County Recorder.

Parcel 1A:

A nonexclusive easement for ingress and egress as set forth and disclosed in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Bailey's 2700 North PUD recorded December 19, 2022 as Entry No. 3267535 in the office of the Weber County Recorder.

Tax Parcel Number: 17-452-0024

Property Address: 390 W 2700 N, Pleasant View, UT 84404