

**PREPARED BY**  
**RECORDING REQUESTED BY,**  
**AND WHEN RECORDED MAIL TO:**

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120 South Central Ave., Suite 1600  
St. Louis, Missouri 63105

*MNT 89472*

*Tax ID: 00-093-0070*

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

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

by and from

**D WOOD HOTEL, LLC,**  
a Utah limited liability company  
**"Grantor"**

to

**METRO NATIONAL TITLE**  
**"Trustee"**

for the benefit of

**GREENLAKE REAL ESTATE FINANCE LLC,**  
a California limited liability company, and/or Assignees  
**"Beneficiary"**

Dated as of January 13, 2022

**THIS DEED OF TRUST SECURES A PROMISSORY NOTE WHICH REQUIRES A BALLOON PAYMENT ON MATURITY.**

**ATTENTION: COUNTY RECORDER:** This Deed of Trust covers goods which are or are to become affixed to or fixtures on the land described in Exhibit A attached hereto and is to be filed for record in the records where deeds of trust on real estate are recorded. Additionally, this instrument should be appropriately indexed, not only as a deed of trust, but also as a Financing Statement covering goods that are or are to become fixtures on the real property described herein. The mailing addresses of the Grantor (Debtor) and Beneficiary (Secured Party) are set forth in the Preamble of this Deed of Trust. The term "Grantor" shall be synonymous with the term "Trustor". The term "Beneficiary" shall be synonymous with the term "Lender". This Deed of Trust secures a \$39,400,000.00 Promissory Note, which is secured by the Mortgaged Property.

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

**THIS FIRST PRIORITY DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** (this "**Deed of Trust**" or this "**Agreement**") is dated as of the date set forth above by and from Grantor whose address is 8762 Preston Trace Boulevard, Frisco, Texas 75033, to Metro National Title with an address of 345 East 300 South, Salt Lake City, UT 84111, for the benefit of Beneficiary, having an address at 1416 El Centro Street, Suite 200, South Pasadena, California 91030.

**ARTICLE 1  
DEFINITIONS**

**Section 1.1 Definitions.** All capitalized terms used herein without definition shall have the respective meanings ascribed to them in that certain Promissory Note (as defined below). As used herein, the following terms shall have the following meanings:

(a) "**Affiliate**": shall mean with respect to any party: (i) any entity in which such party or the owners of the Party has an ownership or other financial interest, (ii) any entity controlled by the party or the owners of the party, (iii) any person who is an owner or has a financial interest in such party or (iv) any relative by blood or marriage to such party or any entity owned by such relative.

(b) "**Bankruptcy Code**": means Title 11 of the United States Code.

(c) "**Grantor**": means party or parties named in the first paragraph of this Deed of Trust as Grantor and to any subsequent owner of all or any portion of the Mortgaged Property. This definition shall not limit or negate the due on sale clause and restrictions against transfer of the Mortgaged Property contained in this Deed of Trust.

(d) "**Guarantor**": means the parties specified as Guarantor in the Promissory Note.

(e) "**Hazardous Materials**": means all materials defined as Hazardous under applicable Hazardous Materials Laws.

(f) "**Hazardous Materials Laws**": means all laws, ordinances and regulations relating to Hazardous Materials including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(g) "**Indebtedness**": (1) All indebtedness of Grantor to Beneficiary, including, without limitation, the sum of all (a) principal, interest and other amounts evidenced or secured by the Loan Documents as they may be amended, extended or otherwise changed from time to time, and (b) principal, interest and other amounts which may hereafter be loaned by Beneficiary under or in connection with the Promissory Note or any of the other Loan Documents, whether evidenced by a promissory note or other instrument which, by its terms, is secured hereby, and (2) all other indebtedness, obligations and liabilities now or hereafter existing of any

kind of Grantor to Beneficiary under documents which recite that they are intended to be secured by this Deed of Trust.

(h) **"Loan Documents"**: means (i) The Promissory Note, (ii) this Deed of Trust (iii) any other documents described as "Loan Documents" in the Promissory Note.

(i) **"Mortgaged Property"**: means all of Grantor's interest in

(1) the fee interest in the real property described in **Exhibit A** attached hereto and incorporated herein by this reference, together with any greater estate therein as hereafter may be acquired by Grantor (the "**Land**") together with all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Premises, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated and all timber, oil, gas, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Premises and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized;

(2) all improvements now owned or hereafter acquired by Grantor, now or at any time situated, placed or constructed upon the Land (the "**Improvements**"; the Land and Improvements are collectively referred to as the "**Premises**");

(3) all personal property of any kind including without limitation materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, including without limitation machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; (the "**Fixtures**");

(4) all tangible and intangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Premises or are located on the Premises and all goods, accounts, general intangibles, instruments, documents, chattel paper, accounts receivable and all other tangible or intangible personal property of any kind or character, including such items of personal property as defined in the UCC (defined below), now owned or hereafter acquired by Grantor and now or hereafter placed upon, used in connection with, arising from or otherwise related to the Premises including without limitation, inventories, tools, books and records, websites, URLs, blogs, all intellectual property (including without limitation, patents, trademarks, service marks and trade secrets) and social network pages, permits, licenses operating agreements, surveys, plans and specifications (the "**Personalty**");

(5) all earnings, inventory, accounts, cash receipts, deposit accounts, accounts receivable, credit card receivables, payment intangibles, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, royalties, issues, and profits from the Premises, the Fixtures, the Personal Property, or any other part of the Premises and all reserves, escrows or impounds required under the Promissory Note all deposits placed by Grantor with any utility or service provider to the Premises (the "**Income**");

(6) all leases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant to any Person a possessory interest in, or the right to use, all or any part of the Premises, together with all related security and other deposits all Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases (the "Leases");

(7) all of the rents, revenues, royalties, income, proceeds, profits, receivables and other benefits paid or payable by to Grantor for using, leasing, licensing possessing, operating from, residing in, selling or otherwise enjoying the Premises or any other assets owned by Grantor (the "Rents");

(8) all contracts, options or other agreements, including without limitation construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, management agreements, service contracts, listing agreements, guaranties, warranties, permits, licenses, certificates and entitlements in any way relating to the construction, use, occupancy, operation, maintenance, enjoyment or ownership of the Premises (the "Property Agreements");

(9) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing;

(10) all property tax refunds or rebates (the "Tax Refunds");

(11) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Grantor (the "Insurance");

(12) all awards, payments, and other compensation made or to be made by any municipal, state or federal authority with respect to the Premises, the Fixtures, the Personal Property, or any other part of the Premises, including any awards or settlements resulting from any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Premises, whether direct or indirect, any damage to the Premises caused by governmental action that does not result in a Condemnation Action, or the total or partial taking of the Premises, the Fixtures, the Personal Property, or any other part of the Premises under the power of eminent domain or otherwise and including any conveyance in lieu thereof (the "Condemnation Awards");

(13) the Tax Impound (as defined in the Promissory Note) and any other deposits held by the Beneficiary (the "Imposition Deposits") to pay when due (a) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Premises, (b) the premiums for fire and other casualty insurance, liability insurance, rent loss insurance, and such other insurance as Beneficiary may require, (c) taxes, assessments, vault rentals, and other charges, if any, general, special, or otherwise, including assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien on the Premises and (d) amounts for other charges and expenses which Beneficiary at any time reasonably deems necessary to protect the Premises, to prevent the imposition of liens on the Premises or otherwise to protect Beneficiary's interests, all as reasonably determined from time to time by Beneficiary;

(14) all right, title, and interest in and to trademarks that are registered or the subject of pending applications for registration in the United States Patent and Trademark Office, and the applications and registrations thereof, together with the goodwill of the business connected with the use of and symbolized by the trademarks, and all proceeds thereof, including, without limitation, any and all causes of action for infringement thereof and any and all royalties for any licenses thereof; and

(15) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof (the "Proceeds");

As used in this Deed of Trust, the term "**Mortgaged Property**" shall mean all or, where the context permit or requires, any portion of the above or any interest therein.

(j) "**Obligations**": means all of the agreements, covenants, conditions, warranties, representations and other obligations of Grantor (including, without limitation, the obligation to repay the Indebtedness) under the Promissory Note and the other Loan Documents.

(k) "**Permitted Encumbrances**" means the encumbrances approved by Lender as of the date of this Deed of Trust.

(l) "**Personal Property**" means the Fixtures, Personalty, Income, Leases, Rents, Property Agreements, Tax Refunds, Proceeds, Insurance and Condemnation Awards and all other Mortgaged Property which is personal property.

(m) "**Promissory Note**" or "**Note**": means that certain Promissory Note secured by Deeds of Trust dated as of even date herewith by Grantor to Lender in the amount of \$39,400,000.00 as amended, supplemented or otherwise modified from time to time. The Note provides for changes from time to time in the rate of Interest borne by the Indebtedness secured by the Note.

(n) "**Single Purpose Entity**" means a limited liability company or limited partnership or corporation which, at all times since its formation and thereafter: (a) was and will be organized solely for the purpose of owning and operating the Mortgaged Property, (b) has not and will not engage in any business unrelated to the ownership of its interest in the Mortgaged Property, (c) has not and will not have any assets other than those related to the Mortgaged Property, (d) has maintained and will maintain its accounts, books and records separate from any other Person, (e) has not commingled and will not commingle its funds or assets with those of any other person or entity, (f) has held and will hold its assets only in its own name, (g) has conducted and will conduct its business only in its own name, (h) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person; (i) has paid and will pay its own liabilities only out of its own funds and assets, (j) has observed and will observe all corporate formalities, (k) has maintained and will maintain an arms'-length relationship with its Affiliates, (l) has held and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other person or entity, (m) has maintained and will maintain adequate capital in light of its contemplated business operations.

(o) "**Trustee**": Trustee means Metro National Title, or any successor Trustee appointed herein.

(p) "**UCC**": UCC means The Uniform Commercial Code as enacted and in effect in the state where the Land is located, and as it may be amended from time to time; provided that, to the extent the UCC is used to define any term in this Deed of Trust or in any other Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9, or the Article devoted to Secured Transactions, shall govern; provided further, however, that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, any security interest herein granted is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Land is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

## ARTICLE 2 GRANT

**Section 2.1 Grant.** To secure the full and timely payment of the Indebtedness and the full and

timely performance of the Obligations, Grantor GRANTS, BARGAINS, ASSIGNS, SELLS and CONVEYS, to Trustee the Mortgaged Property, FOR THE BENEFIT OF THE BENEFICIARY, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property, IN TRUST, WITH POWER OF SALE, and Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee.

**ARTICLE 3**  
**WARRANTIES, REPRESENTATIONS AND COVENANTS**

Grantor warrants, represents and covenants to Beneficiary as follows:

**Section 3.1 Title to Mortgaged Property and Lien of this Instrument.** Grantor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Deed of Trust and related UCC Financing Statements (as defined in the Loan Documents) create a valid, enforceable lien and security interest against the Mortgaged Property.

**Section 3.2 First Lien Status.** Grantor shall preserve and protect the first lien status and security interest in the Mortgaged Property under this Deed of Trust and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Grantor shall promptly, and at its expense, (a) give Beneficiary a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Promissory Note (including the requirement of providing a bond or other security satisfactory to Beneficiary). Grantor shall give Beneficiary a first priority perfected security interest in all proceeds of the Mortgaged Property. Further, in no event shall Grantor cause or permit any lien (whether or not such lien has priority over the lien created by this Deed of Trust) upon the Mortgaged Property imposed pursuant to any applicable laws.

**Section 3.3 Payment and Performance.** Grantor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed.

**Section 3.4 Replacement of Fixtures and Personalty.** Grantor shall not, without the prior written consent of Beneficiary, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of equal or better suitability and value, owned by Grantor subject to the liens and security interests of this Deed of Trust and the other Loan Documents, and free and clear of any other lien or security interest except such as may be permitted under the Promissory Note or first approved in writing by Beneficiary.

**Section 3.5 Insurance.** Grantor shall, while any of the Obligations of Grantor under any Loan Document remains outstanding, maintain at Grantor's sole expense, with licensed insurers approved by Beneficiary, the following policies of insurance in form and substance reasonably satisfactory to Beneficiary:

(a) **Title Insurance.** A Title Policy, together with any endorsements which Beneficiary may reasonably require (including, without limitation zoning), insuring Beneficiary, in the aggregate principal amount of the Promissory Note, of the validity and the priority of the lien of the Deed of Trust upon the Mortgaged Property, subject only to matters approved by Beneficiary in writing. During the term of the Promissory Note, Grantor shall deliver to Beneficiary, within five (5) days of Beneficiary's written request, such other endorsements to the Title Policy as Beneficiary may reasonably require with respect to the Mortgaged Property.

(b) **Property Insurance.** A Builders All Risk/Special Form Completed Value (Non-Reporting Form) Hazard Insurance policy, for the full replacement value of the Mortgaged Property, including

without limitation, theft coverage and such other coverages and endorsements as Beneficiary may deem reasonably necessary, insuring Beneficiary against damage to the Mortgaged Property and the improvements thereon. Such coverage should adequately insure any and all collateral securing the Promissory Note, whether such collateral is onsite, stored offsite or otherwise.

(c) **Flood Hazard Insurance.** A policy of flood insurance, as required by applicable governmental regulations, or as deemed necessary by Beneficiary, in an amount required by Beneficiary, but in no event less than the amount sufficient to meet the requirements of applicable law and governmental regulation.

(d) **Liability Insurance.** A policy of Commercial General Liability insurance on an occurrence basis, with a limit of no less than \$2,000,000 per occurrence and as reasonably required by Beneficiary, insuring against liability for injury and/or death to any person and/or damage to any property occurring on the Mortgaged Property and/or in the improvements thereon.

(e) **Dram Shop Insurance.** If alcoholic beverages are to be served at the Mortgaged Property, Mortgagor shall carry dram shop insurance with coverage of at least \$5,000,000 per occurrence.

(f) **Other Coverage.** Grantor shall provide to Beneficiary evidence of such other reasonable insurance in such reasonable amounts as Beneficiary may from time to time request against such other insurable hazards which at the time are commonly insured against for property similar to the subject Mortgaged Property located in or around the region in which the subject Mortgaged Property is located. Such coverage requirements may include but are not limited to coverage for earthquake, acts of terrorism, business income, delayed business income, rental loss, sink hole, soft costs, tenant improvement or environmental coverages.

(g) **Insurance Certificates.** Grantor shall provide to Beneficiary insurance certificates or other evidence of coverage in form acceptable to Beneficiary, with coverage amounts, deductibles, limits and retentions as required by Beneficiary. All insurance policies shall provide that the coverage shall not be cancelable or materially changed without thirty (30) days prior written notice to Beneficiary. Beneficiary shall be named under a Beneficiary's Loss Payable Endorsement (form #438BFU or equivalent) on all property insurance policies which Grantor is required to or actually maintains with respect to the Mortgaged Property and the improvements thereon. Grantor shall provide a certificate of liability insurance naming Beneficiary as an additional insured on all liability policies maintained by Grantor including any umbrella coverage. All insurance policies shall be issued and maintained by insurers approved to do business in the state in which the Mortgaged Property is located and must have an A.M. Best Company financial rating and policyholder surplus acceptable to Beneficiary.

(h) **Impounds.** At Beneficiary's option, Beneficiary may require Grantor to deposit 1/12<sup>th</sup> of the estimated annual insurance premiums with Beneficiary each month, which sum Beneficiary shall use to pay such premiums when due directly to the insurer. The impounds shall not earn interest and need not be held in a separate account.

### **Section 3.6 Hazardous Materials.**

(a) **Representation re Hazardous Materials.** The Premises has not been used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials. The Premises are in compliance with all Hazardous Materials Laws and there has been no release of Hazardous Materials in, on about or under the Premises.

(b) **No Hazardous Activities.** Grantor shall not cause or permit the Premises to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials. Grantor shall comply and cause the Premises to comply with all

Hazardous Materials Laws. Grantor shall promptly notify Beneficiary in writing of: (i) any knowledge by Grantor of the discovery of any Hazardous Materials on, under or about the Premises in violation of any Hazardous Materials Law (ii) any knowledge by Grantor that the Premises does not comply with any Hazardous Materials Laws in any respect; (iii) any claim that any Hazardous Materials Law has been violated whether by a governmental authority or a third party; and (iv) any knowledge by Grantor of the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could negatively affect the Premises. In response to the presence of any Hazardous Materials on, under or about the Premises, Grantor shall promptly take, at Grantor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims as reasonably determined by Beneficiary. Upon reasonable prior notice to Grantor, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Premises for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath or from the Premises.

(c) **Hazardous Materials Indemnity.** Grantor hereby agrees to defend, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including, without limitation, reasonable attorneys' fees and expenses) which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, disposal, threatened disposal, transportation or presence of Hazardous Materials in, on, under or about the Premises. Grantor shall immediately pay to Beneficiary upon demand any amounts owing under this indemnity, together with interest from the date the indebtedness arises until paid at the rate of interest applicable to the principal balance of the Note. GRANTOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE (a) THE CANCELLATION OF THE NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE DEED OF TRUST, (b) ANY JUDICIAL OR NON-JUDICIAL FORECLOSURE UNDER THE DEED OF TRUST OR TRANSFER OF THE MORTGAGED PROPERTY IN LIEU THEREOF, AND (c) THE SATISFACTION OF ALL OF GRANTOR'S OBLIGATIONS.

**Section 3.7 Leasing.** Grantor shall at all times maintain a lease for all space intended to be leased in the Mortgaged Property, if any, at fair market rental rates. Any new lease or material lease amendment or termination for any portion of the Mortgaged Property shall be subject to Beneficiary's prior written approval. Upon the request of Beneficiary, Grantor shall use its diligent, commercially reasonable efforts to obtain and deliver to Beneficiary, a subordination, non-disturbance and attornment agreement in form and substance satisfactory to Beneficiary from any tenant of the Mortgaged Property. No tenant or occupant may engage in any Controlled Substances Activities, as defined in the Note.

**Section 3.8 Liens & Indebtedness.** Grantor will not create or permit to exist any lien upon or with respect to any of the property that secures the Promissory Note (including, without limitation, the Mortgaged Property) other than (i) the exceptions approved by Beneficiary and set forth in the Title Policy, (ii) liens for Taxes not yet due and payable or which are being contested in good faith by Grantor in accordance with the requirements of this Agreement, (iii) judgment liens securing judgments which are bonded or released within thirty (30) days after the date the judgment is filed, or (iv) mechanics' or materialmen's liens contested by Grantor in good faith and with diligence and which are bonded, canceled or discharged of record within thirty (30) days after recording. No indebtedness other than the indebtedness may be secured by the Mortgaged Property.

**Section 3.9 Required Notices.** Grantor covenants and agrees to notify Beneficiary, within five (5) Business Days from the occurrence of any event known to it (or the receipt of any notice by Grantor) that could have a material adverse effect on, or the financial condition of, Grantor, Guarantor or the Mortgaged Property (or any portion thereof), including, but not limited to (a) the filing or threatening in writing of any action or proceeding affecting Grantor, Guarantor or the Mortgaged Property, (b) the occurrence of any damage to the Mortgaged Property, (c) any condemnation offer or action affecting the Mortgaged Property, (e) notices regarding violations of laws affecting Grantor, Guarantor or the Mortgaged Property, or (f) notices alleging a default (by any party thereto) under any agreement to which Grantor is a party



**Section 3.10 Amendment of Organizational Documents.** To the extent the party or parties constituting Grantor or Guarantor is an entity rather than a natural person such party shall not amend, or permit or suffer the amendment of, the organizational documents of such party without the prior written consent of Lender.

**Section 3.11 Further Assurances.** Upon Beneficiary's request and at Grantor's sole cost and expense, Grantor shall execute, acknowledge and deliver any other instruments and perform any other acts reasonably necessary, desirable or proper, as reasonably determined by Beneficiary, to carry out the purposes of this Agreement and the other Loan Documents or to perfect and preserve any liens created by the Loan Documents.

**Section 3.12 Maintenance of Mortgaged Property.** Grantor shall preserve and protect the Mortgaged Property and shall ensure that the Mortgaged Property is maintained in good condition and repair. Grantor shall also maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements, and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Beneficiary, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Grantor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

**Section 3.13 Inspections and Alterations.** Grantor shall permit Beneficiary, and its agents, representatives and employees, upon reasonable prior notice to Grantor, to inspect the Mortgaged Property and conduct such engineering studies or other analyses of the Premises as Beneficiary may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property. Grantor shall not make any material alterations or improvements to the Mortgaged Property without the prior written consent of Beneficiary.

**Section 3.14 Transactions With Affiliates.** Grantor shall not permit or suffer, without Beneficiary's prior written approval, (a) any direct or indirect payment by Grantor to any Affiliate of Grantor except for distributions of cash, or (b) any other transaction involving Grantor and any Affiliate of Grantor; provided, however, that the foregoing restriction shall not apply to transactions relating to reasonable and customary costs charged to Grantor by Affiliates of Grantor incurred in connection with asset management and administration of Grantor and/or the Mortgaged Property; and, provided, further, that such costs are reasonably determined based on their actual allocated cost.

**Section 3.15 Americans With Disabilities Act Compliance.** Grantor shall maintain the Premises in strict accordance and full compliance with all of the requirements of the Americans with Disabilities Act of 1990.

**Section 3.16 Due on Sale.** Grantor shall not, without Lender's consent: (a) sell, assign or otherwise transfer the Mortgaged Property (or any portion thereof, including without limitation the right to receive the revenues therefrom) to any other Person or (b) merge into or consolidate with any corporation or other entity or (c) sell, lease, assign, transfer or otherwise dispose of all or substantially all of its assets or (d) allow any change in management, control or ownership of Grantor or (e) allow any transfer of any ownership interest in Grantor or (f) issue any new shares or membership interests or (g) allow any new shareholders or members, in each case without Beneficiary's prior written consent, which consent may be withheld in Beneficiary's sole and absolute discretion. Any violation of this section shall be an Event of Default and result in the Indebtedness being accelerated and due and payable.

## ARTICLE 4

**Section 4.1 Taxes.** Grantor shall pay and discharge or cause to be paid and discharged when due all taxes, including, without limitation, all real estate, ad valorem, sales, use, single business, gross receipts or similar

assessments assessed in connection with the Mortgaged Property. Lender may require Grantor to deposit funds with Lender for payment of real estate taxes as required under the Promissory Note.

**Section 4.2** **Guarantees.** Without the prior written consent of Beneficiary, Grantor shall not guarantee or become liable in any way as a surety, endorser (other than as endorser of negotiable instruments in the ordinary course of business) or accommodation endorser or otherwise for debt or obligations of any other person or entity.

**Section 4.3** **Single Purpose Entity.** To the extent the party or parties comprising Grantor is an entity rather than a natural person such entity shall be a Single Purpose Entity at all times.

**Section 4.4** **Books and Records/Inspections.** Grantor shall keep, or cause to be kept, complete and accurate books of account for the Mortgaged Property in accordance with generally accepted accounting principles, consistently applied. Without limiting the generality of any other provision hereof, Grantor shall upon reasonable notice, permit representatives of Beneficiary, from time to time, as often as may be reasonably requested, to visit and inspect the assets of Grantor, inspect and make extracts from its books and records, and discuss with its members, its employees and its independent accountants, Grantor's business, assets, liabilities, financial condition, business prospects and results of operations.

**Section 4.5** **Compliance with Laws.** Grantor shall comply in all material respects with all laws, ordinances, governmental rules and regulations to which it is subject, and obtain and keep in force any and all licenses, permits, franchises, or other governmental authorizations necessary to the ownership of its assets or to the conduct of its business.

**Section 4.6** **Reporting Covenants.** Grantor shall deliver to Beneficiary, as soon as available, but in no event later than ninety (90) days after each calendar year end, a current financial statement (including, without limitation, an income and expense statement and balance sheet) certified by an executive officer of Grantor as being true and correct in all material respects, together with any other financial information (which may include bank statements, quarterly financial statements, quarterly operating statements and cash flow projections) reasonably requested by Beneficiary. If audited financial information is prepared, Grantor shall deliver to Beneficiary copies of such information within fifteen (15) days of its final preparation. Except as otherwise agreed to by Beneficiary, all such financial information shall be prepared in accordance with generally accepted accounting principles consistently applied. In addition to the foregoing, Grantor shall deliver to Beneficiary within 10 days or request such other information pertaining to the Mortgaged Property, Grantor, Guarantor or constituent members of Grantor as Beneficiary may reasonably request.

**Section 4.7** **Financial Condition.** All financial and other information provided to Beneficiary with regard to Grantor and Guarantor is true, accurate and complete in all respects. There shall be no material adverse change in the financial condition of Grantor or Guarantor which may adversely affect their ability to fulfill their obligations under the Loan Documents. There shall be no action, proceeding, or investigation pending or threatened or affecting Grantor or Guarantor, which may adversely affect their ability to fulfill their obligations under the Loan Documents. There are no judgments or orders for the payment of money rendered against Grantor or Guarantor for an amount in excess of \$10,000 that have been un-discharged for a period of ten (10) or more consecutive days and the enforcement of which is not stayed by reason of a pending appeal or otherwise.

**Section 4.8** **Other Covenants.** All of the covenants in the Promissory Note are incorporated herein by reference and, together with covenants in this Article 3, shall be covenants running with the land.

**Section 4.9** **Condemnation Awards.** Grantor assigns all Condemnation Awards to Beneficiary and authorizes Beneficiary to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Promissory Note.

**Section 4.10 Use of Mortgaged Property.** The Mortgaged Property may not be used as a residence of Grantor.

**ARTICLE 5**  
**DEFAULT AND FORECLOSURE**

**Section 5.1 Event of Default.** Any failure to perform any obligation under this Deed of Trust or any of the Loan Documents after any express cure period has elapsed shall be an "**Event of Default**".

**Section 5.2 Remedies.** If an Event of Default exists, Beneficiary may, at Beneficiary's election and by or through Trustee or otherwise, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Grantor), whereupon the same shall become immediately due and payable.

(b) **Entry on Premises.** Enter the Premises and take exclusive possession thereof and of all books, records and accounts relating thereto or located thereon. If Grantor remains in possession of the Premises after an Event of Default and without Beneficiary's prior written consent, Beneficiary may invoke any legal remedies to dispossess Grantor.

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property upon such terms and conditions as Beneficiary may deem reasonable under the circumstances (making such repairs, alternations, additions and improvements and taking other actions, from time to time, as Beneficiary deems necessary or desirable), and apply all Rents and other amounts collected by Trustee in connection therewith in accordance with the provisions of this Deed of Trust.

(d) **Foreclosure and Sale.** Beneficiary may institute suit for judicial foreclosure and sell or offer for sale the Mortgaged Property in such portions and in such order as Beneficiary may determine, or initiate a non-judicial foreclosure through Trustee in accordance with the provisions of Utah Code Annotated Title 57, Chapter 1, *et seq.*, as amended from time to time. If this Deed of Trust encumbers more than one parcel of real estate, foreclosure may be by separate parcel or en masse, as Beneficiary may elect in its sole discretion. Upon the filing of such notice of election and demand for sale, Trustee shall promptly comply with all notice and other requirements of the laws of the State of Utah then in force with respect to such sales, and shall give public notice of the time and place of such sale by advertisement weekly in some newspaper of general circulation then published in the county or counties in which the Mortgaged Property is located for the time period provided in UCA § 57-1-25, as amended from time to time. Any sale conducted by Trustee pursuant to this section shall be held at the front door of the county courthouse for such County or City and County, or on the Mortgaged Property, or at such other place as similar sales are then customarily held in such County or City and County, provided that the actual place of sale shall be specified in the notice of sale. All fees, costs and expenses of any kind incurred by Beneficiary in connection with foreclosure of this Deed of Trust, including, without limitation, the costs of any appraisals of the Mortgaged Property obtained by Beneficiary, all costs of any receivership for the Mortgaged Property advanced by Beneficiary, and all attorneys' and consultants' fees incurred by Beneficiary, shall constitute a part of the Indebtedness and may be included as part of the amount owing from Grantor to Beneficiary at any foreclosure sale. The proceeds of any sale under this section shall be applied first to the fees and expenses of the officer conducting the sale, and then to the reduction or discharge of the Indebtedness; any surplus remaining shall be paid over to Grantor or to such other person or persons as may be lawfully entitled to such surplus. At the conclusion of any foreclosure sale, the officer conducting the sale shall execute and deliver to the purchaser at the sale a certificate of purchase which shall describe the property sold to such purchaser and shall state that upon the expiration of the applicable periods for redemption, the holder of such certificate will be entitled to a deed to the property described in the certificate. After the expiration of all applicable periods of redemption, unless the

property sold has been redeemed by Grantor, the officer who conducted such sale shall, upon request, execute and deliver an appropriate deed to the holder of the certificate of purchase or the last certificate of redemption, as the case may be. Nothing in this section dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Utah law, and any such inconsistency shall be resolved in favor of Utah law applicable at the time of foreclosure.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and with or without notice to Grantor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Grantor irrevocably consents to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of this Deed of Trust. In addition, any costs incurred, or advances made, by Beneficiary in connection with the implementation or operation of the receivership, shall be added to the obligations secured hereby, bear interest at the Default Rate, be guaranteed by any guarantee(s) now or thereafter relating to the obligations secured hereby and be secured by this Deed of Trust. Grantor hereby waives any right it may have under applicable law to require Beneficiary to make any showing or meet any obligation as a condition to the appointment of a receiver

(f) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity.

**Section 5.3 Separate Sales.** The Mortgaged Property may be sold in one or more parcels and in such manner and order as Trustee in its sole discretion may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

**Section 5.4 Remedies Cumulative, Concurrent and Nonexclusive.** Beneficiary and Trustee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulated and concurrent, (b) may be pursued separately, successively or concurrently against Grantor or others obligated under the Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Beneficiary, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Beneficiary in the enforcement of any rights, remedies or recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default, except as provided in Utah Code Ann. Title 57, Chapter 1, *et seq.*

**Section 5.5 Release of and Resort to Collateral.** Beneficiary may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interest created in or evidenced by the Loan Documents or their status as a first and prior lien and security interest in and to the Mortgaged Property. For payment of the Indebtedness, Beneficiary may resort to any other security in such order and manner as Beneficiary may elect.

**Section 5.6 Waiver of Redemption, Notice and Marshalling of Assets.** To the fullest extent permitted by law, Grantor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Grantor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of any Event of Default or of any election by Trustee or Beneficiary to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (c) any right to a marshalling of assets or a sale in inverse order of alienation.

**Section 5.7 Discontinuance of Proceedings.** If Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Beneficiary shall have the unqualified right to do so and, in such an event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Beneficiary shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Beneficiary thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

**Section 5.8 Allocation of Proceeds.** The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, shall be applied by Beneficiary or Trustee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

(a) to the payment of the costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation (1) trustee's and receiver's fees and expenses, including the repayment of the amounts evidenced by any receiver's certificates, (2) court costs, (3) attorneys' and accountants' fees and expenses, and (4) costs of advertisement;

(b) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Beneficiary in its sole discretion may determine; and

(c) the balance, if any, to the payment of the Persons legally entitled thereto.

**Section 5.9 Occupancy After Foreclosure.** Any sale of the Mortgaged Property or any part thereof will divest all right, title and interest of Grantor in and to the property sold. Subject to applicable law, any purchaser at a foreclosure sale will receive immediate possession of the property purchased. If Grantor retains possession of such property or any part thereof subsequent to such sale, Grantor will be considered a tenant at sufferance of the purchaser, and will, if Grantor remains in possession after demand to remove, be subject to eviction and removal, forcible or otherwise, with or without process of law.

**Section 5.10 Additional Advances and Disbursements; Costs of Enforcement.**

(a) If any Event of Default exists, Beneficiary shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Grantor. All sums advanced and expenses incurred at any time by Beneficiary under this Section 5.10, or otherwise under this Deed of Trust or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the rate or rates at which interest is then computed on the Indebtedness, and all such sums, together with interest thereon, shall be secured by this Deed of Trust.

(b) Grantor shall pay all expenses (including reasonable attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Deed of Trust and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Deed of Trust and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Beneficiary in respect thereof, by litigation or otherwise.

**Section 5.11 No Mortgagee in Possession.** Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Beneficiary under the Loan Documents, at law or in equity shall cause Beneficiary or Trustee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate

Beneficiary or Trustee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

**Section 5.12 Indemnification.** Grantor shall indemnify, defend, protect, and hold harmless Beneficiary its partners, members and their respective officers, agents, servants, employees, and independent contractors from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from (i) any cause in, on or about the Premises, and (ii) any acts, omissions or negligence of Grantor or of any person claiming by, through or under Grantor, or of the contractors, agents, servants, employees, invitees, guests or licensees of Grantor or any such person, in, on or about the Premises, (iii) any claims by any third parties against Grantor, Guarantor or against the Mortgaged Property; (iv) any release of any Hazardous Material in, on or about the Premises or (iv) any breach of this Deed of Trust or any of the Loan Documents or the obligations thereunder. The provisions of this Section 5.12 shall survive the maturity of the Obligations.

**Section 5.13 No Offset.** Under no circumstances shall Grantor fail or delay to perform (or resist the enforcement of) any of its obligations in connection with any of the Loan Documents because of any alleged offsetting claim or cause of action against Beneficiary (or any indebtedness or obligation of Beneficiary) which has not been confirmed in a final judgment of a court of competent jurisdiction (sustained on appeal, if any ) against Beneficiary, and Grantor hereby waives any such rights of setoff (or offset) which it might otherwise have with respect to any such claims or causes of action against Beneficiary (or any such obligations or indebtedness of Beneficiary), unless and until such right of setoff is confirmed and liquidated by such a final judgment.

## **ARTICLE 6**

### **ASSIGNMENT OF RENTS AND LEASES**

**Section 6.1 Assignment.** In furtherance of and in addition to the assignment made by Grantor in **Section 2.1** of this Deed of Trust, Grantor hereby absolutely and unconditionally assigns, sells, transfers and conveys to Beneficiary all of its right, title and interest in and to all Leases, whether now existing or hereafter entered into, and all of its right, title and interest in and to all Rents. This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and be continuing, Grantor shall have a revocable license from Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect all Rents and to hold the Rents in trust for use in the payment and performance of the Obligations and to otherwise use the same. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, whether or not legal proceedings have commenced, and without regard to waste, adequacy of security for the Obligations or solvency of Grantor, the license herein granted shall automatically expire and terminate, without notice by Beneficiary (any such notice being hereby expressly waived by Grantor).

**Section 6.2 Perfection Upon Recordation.** Grantor acknowledges that Beneficiary and Trustee have taken all actions necessary to obtain, and that upon recordation of this Deed of Trust Beneficiary and Trustee shall have, to the extent permitted under applicable law, a valid and fully perfected, first priority present assignment of the Rents arising out of the Leases and all security for such Leases. Grantor acknowledges and agrees that upon recordation of this Deed of Trust Trustee's and Beneficiary's interest in the Rents shall be deemed to be fully perfected, "choate" and enforced as to Grantor and all third parties, including, without limitation, any subsequently appointed trustee in any case under the Bankruptcy Code without the necessity of commencing a foreclosure action with respect to this Deed of Trust, making formal demand for the Rents, obtaining the appointment of a receiver or taking any other affirmative action.

**Section 6.3 Bankruptcy Provisions.** Without limitation of the absolute nature of the assignment of the Rents hereunder, Grantor, Trustee and Beneficiary agree that (a) this Deed of Trust shall constitute a "security

agreement" for purposes of Section 552(b) of the Bankruptcy Code, (b) the security interest created by this Deed of Trust extends to property of Grantor acquired before the commencement of a case in bankruptcy and to all amounts paid as Rents and (c) such security interest shall extend to all Rents acquired by the estate after the commencement of any case in bankruptcy.

**Section 6.4** **No Merger of Estates.** So long as part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of such estates either in Grantor, Beneficiary, any tenant or any third party by purchase or otherwise.

## **ARTICLE 7** **SECURITY AGREEMENT**

**Section 7.1** **Security Interest.** This Deed of Trust constitutes a "security agreement" on personal property within the meaning of the UCC and other applicable law and with respect to the Personal Property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. To this end, Grantor grants to Beneficiary a first and prior security interest in the Personal Property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Beneficiary shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Beneficiary with respect to the Personal Property sent to Grantor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Grantor.

**Section 7.2** **Financing Statements.** Grantor hereby irrevocably authorizes Beneficiary at any time and from time to time to file in any filing office in any UCC jurisdiction one or more financing or continuation statements and amendments thereto, relative to all or any part of the Mortgaged Property, without the signature of Grantor where permitted by law. Grantor agrees to furnish Beneficiary, promptly upon request, with any information required by Beneficiary to complete such financing or continuation statements. If Beneficiary has filed any initial financing statements or amendments in any UCC jurisdiction prior to the date hereof, Grantor ratifies and confirms its authorization of all such filings. Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Beneficiary, and agrees that it will not do so without Beneficiary's prior written consent, subject to Grantor's rights under Utah Code Ann. Title 70A, Chapter 9a, *et seq.* Grantor shall execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such additional financing statements and such further assurances as Beneficiary may, from time to time, reasonably consider necessary to create, perfect and preserve Beneficiary's security interest hereunder and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

**Section 7.3** **Fixture Filing.** This Deed of Trust shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Grantor) and Secured Party (Beneficiary) as set forth in the first paragraph of this Deed of Trust.

## **ARTICLE 8** **INTENTIONALLY OMITTED**

## **ARTICLE 9** **INTENTIONALLY OMITTED**

## **ARTICLE 10**

**MISCELLANEOUS**

**Section 10.1** **Notices.** Any notice required or permitted to be given under this Deed of Trust shall be given in accordance with the Promissory Note.

**Section 10.2** **Covenants Running with the Land.** All Obligations contained in this Deed of Trust are intended by Grantor and Beneficiary to be, and shall be construed as, covenants running with the Mortgaged Property. All Persons who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice, and be bound by, the terms of the Promissory Note and the other Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Beneficiary.

**Section 10.3** **Attorney-in-Fact.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest and with full power of substitution, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, if Grantor shall fail to do so within ten (10) days after written request by Beneficiary, (b) upon the issuance of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Personal Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Mortgaged Property, and (d) while any Event of Default exists, to perform any obligation of Grantor hereunder, however: (1) Beneficiary shall not under any circumstances be obligated to perform any obligation of Grantor; (2) any sums advanced by Beneficiary in such performance shall be added to and included in the Indebtedness and shall bear interest at the rate or rates at which interest is then computed on the Indebtedness; (3) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (4) Beneficiary shall not be liable to Grantor or any other person or entity for any failure to take any action which it is empowered to take under this **Section 10.3.**

**Section 10.4** **Successors and Assigns.** This Deed of Trust shall be binding upon and inure to the benefit of Beneficiary, Trustee and Grantor and their respective successors and assigns. Grantor shall not, without the prior written consent of Beneficiary, assign any rights, duties or obligations hereunder.

**Section 10.5** **No Waiver.** Any failure by Beneficiary or Trustee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Beneficiary or Trustee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

**Section 10.6** **Promissory Note.** If any conflict or inconsistency exists between this Deed of Trust and the Promissory Note, the Promissory Note shall govern.

**Section 10.7** **Release or Reconveyance.** Upon payment in full of the Indebtedness and performance in full of the Obligations, Beneficiary, at Grantor's expense, shall release the liens and security interests created by this Deed of Trust or reconvey the Mortgaged Property to Grantor.

**Section 10.8** **Waiver of Stay, Moratorium and Similar Rights.** Grantor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Deed of Trust or the Indebtedness secured hereby, or any agreement between Grantor and Beneficiary or any rights or remedies of Beneficiary or Trustee.

**Section 10.9** **Applicable Law.** The provisions of this Deed of Trust regarding the creation, perfection, and enforcement of the liens and security interests herein granted shall be governed by and construed under the



laws of the state in which the Land is located. All other provisions of this Deed of Trust shall be governed by the laws of the State in which the Land is located without regard to conflicts of laws principles, with the exception of the Arbitration Provision at Section 10.24 below, which shall be enforced in accordance with the Federal Arbitration Act, 9 U.S.C.S. §1 *et seq.*

**Section 10.10 Headings.** The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

**Section 10.11 Entire Agreement.** This Deed of Trust and the other Loan Documents embody the entire agreement and understanding between Grantor and Beneficiary and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 10.12 Choice of Law.** Grantor agrees that (i) whether or not deficiency judgments are available under the laws of the State of Utah after a foreclosure (judicial or non-judicial) of the Mortgaged Property, or any portion thereof, or any other realization thereon by Beneficiary, Beneficiary shall have the right to seek such a deficiency judgment against Grantor in Utah; (ii) Beneficiary shall have the right to enforce such judgment in the State of Utah as well as in other states or foreign jurisdictions.

**Section 10.13 No Third Parties Benefited.** No person other than Beneficiary and Grantor and their permitted successors and assigns shall have any right of action under any of the Loan Documents.

**Section 10.14 Attorneys' Fees and Expenses; Enforcement.** If any attorney is engaged by Beneficiary to enforce or defend any provision of this Agreement, any of the other Loan Documents or other related documents, or as a consequence of any Default under the Loan Documents, with or without the filing of any legal action or proceeding, Grantor shall pay to Beneficiary, within five (5) Business Days after demand, the amount of all reasonable attorneys' fees, paralegal fees and related costs and expenses (whether internal or external) and all costs incurred by Beneficiary in connection therewith, together with interest thereon from the date of such demand until paid at the rate of interest applicable to the principal balance of the Note as specified therein. If any of the services described above are provided by an employee of Beneficiary, Beneficiary's costs and expenses for such services shall be calculated in accordance with Beneficiary's standard charge for such service reasonably determined based on their actual allocated cost.

**Section 10.15 Immediately Available Funds.** Unless otherwise expressly provided for in this Agreement, all amounts payable by Grantor to Beneficiary shall be payable only in United States currency, immediately available funds.

**Section 10.16 Beneficiary's Consent.** Wherever in this Agreement there is a requirement for Beneficiary's consent or approval and/or a document to be provided or an action taken "to the satisfaction of Beneficiary", it is understood by such phrase that Beneficiary shall exercise its consent, right or judgment in its sole discretion.

**Section 10.17 Loan Sales and Participations; Disclosure of Information.** Grantor agrees that Beneficiary may elect, at any time, to sell, assign or grant participations in all or any portion of its rights and obligations under the Loan Documents, and that any such sale, assignment or participation may be to one or more financial institutions, private investors and/or other entities, at Beneficiary's sole discretion. The indemnity obligations of Grantor under the Loan Documents shall also apply with respect to any purchaser, assignee or participant. Beneficiary promptly shall notify Grantor of the completion of such sale, assignment or participation and provide Grantor with a list of all participants and assignees. Beneficiary may designate an agent or independent contractor to exercise any of Beneficiary's rights under this Agreement and any of the other Loan

Documents. Any reference to Beneficiary in any of the Loan Documents shall include Beneficiary's agents, employees or independent contractors.

**Section 10.18 Severability.** If any provision or obligation under this Agreement and the other Loan Documents shall be determined by a court of competent jurisdiction or permitted arbiter to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the Loan Documents; provided, however, that if the rate of interest or any other amount payable under either Note or this Agreement or any other Loan Document, or the right of collectability therefor, are declared to be or become invalid, illegal or unenforceable, Beneficiary's obligations to make advances under the Loan Documents shall not be enforceable by Grantor.

**Section 10.19 Heirs, Successors and Assigns.** Except as otherwise expressly provided under the terms and conditions of this Agreement, the terms of the Loan Documents shall bind and inure to the benefit of the heirs, successors and assigns of the parties.

**Section 10.20 Time is of the Essence.** Time is of the essence of each and every term of this Agreement.

**Section 10.21 Headings.** All article, section or other headings appearing in this Agreement and any of the other Loan Documents are for convenience of reference only and shall be disregarded in construing this Agreement and any of the other Loan Documents.

**Section 10.22 Construction.** Even though this Deed of Trust was prepared by Beneficiary, Grantor acknowledges that it has had the opportunity to review the document and consult with legal counsel and provide comments to Beneficiary. Thus this agreement is a product of negotiation between the parties and should not be construed against Beneficiary.

**Section 10.23 Obligations of Grantor, Joint and Several.** If more than one person or entity has executed this Deed of Trust as "Grantor," the obligations of all such persons or entities hereunder shall be joint and several.

**Section 10.24 Binding Arbitration.** Subject to Section 10.9 above, Grantor agrees that any dispute, claim, or controversy arising after the foreclosure of the Property, a deed in lieu of foreclosure of the Property, Beneficiary or an Affiliate of Beneficiary obtains ownership of the Property, the sale or assignment of the Note, this Mortgage, or the Loan Documents to a third party that is not an Affiliate of Beneficiary (a "**New Lender**"), or the Note is paid in full in accordance with its terms, relating to or arising out of the Note, this Mortgage, or any of the other Loan Documents, the Property, or any other matter between Beneficiary or an Affiliate of Beneficiary and Grantor and/or an Affiliate of Grantor, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration. The parties agree that this will include arbitration of any claim that all or part of the Note, this Mortgage, or any of the other Loan Documents generally or the agreement to arbitrate is void or voidable for any reason, including but not limited to claims that it is a contract of adhesion, fails for lack of consideration, is procedurally or substantively unconscionable or is void as against public policy. The arbitration will be conducted by Judicial Arbitration and Mediation Services ("**JAMS**") in Los Angeles, California, before one arbitrator who shall be a retired judge from the United States District Court or the California state courts. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction, nor preclude use of the courts to obtain injunctive relief or enforcement of remedies not available through arbitration.

The parties acknowledge that the Note, this Mortgage, and the Loan Documents evidence a transaction involving interstate commerce. Notwithstanding any other provisions herein with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this section shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

The parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

In any arbitration arising out of or related to this agreement to arbitrate, the arbitrator(s) are not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover any such damages.

In any arbitration arising out of or related to this agreement to arbitrate, the arbitrator shall award to the prevailing party, if any, the costs and reasonable attorneys' fees incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and reasonable attorneys' fees incurred by the prevailing party in connection with the arbitration.

THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT TO ARBITRATE SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THE NOTE AND THE LOAN DOCUMENTS.

Notwithstanding anything contained herein to the contrary, upon the sale or assignment of the Note, this Mortgage, or the Loan Documents to a New Lender, the arbitration provision contained in this subsection (b) and in the other Loan Documents and any other related references to this arbitration provision contained in the Note, this Mortgage, and the other Loan Documents shall immediately terminate as to the New Lender and be of no further force or effect against the New Lender; *provided, however*, after the sale or assignment of the Note, this Mortgage, or the Loan Documents to a New Lender, this subsection (b) shall continue govern any dispute, claim, or controversy between Beneficiary or an Affiliate of Beneficiary and Grantor and/or an Affiliate of Grantor.

**Section 10.25**                    **LEGAL REPRESENTATION AND WAIVERS.** EACH OF THE PARTIES HERETO SPECIFICALLY ACKNOWLEDGES AND AGREES (A) THAT IT HAS A DUTY TO READ THIS DEED OF TRUST AND THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS HEREOF, (B) THAT IT HAS IN FACT READ THIS DEED OF TRUST AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS DEED OF TRUST (C) THAT IT HAS BEEN REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS DEED OF TRUST AND HAS RECEIVED THE ADVICE OF SUCH COUNSEL IN CONNECTION WITH ENTERING INTO THIS DEED OF TRUST, AND (D) THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS DEED OF TRUST PROVIDE FOR (I) CERTAIN WAIVERS AND FOR (II) THE ASSUMPTION BY ONE PARTY OF, AND/OR RELEASE OF THE OTHER PARTY FROM, CERTAIN LIABILITIES THAT SUCH PARTY MIGHT OTHERWISE BE RESPONSIBLE FOR UNDER THE LAW. EACH PARTY HERETO FURTHER AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY SUCH PROVISIONS OF THIS DEED OF TRUST ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Grantor has on the date set forth in the acknowledgement hereto, effective as of the date first above written, caused this instrument to be duly EXECUTED AND DELIVERED by authority duly given.

**GRANTOR:**

**D WOOD HOTEL, LLC,**  
a Utah limited liability company

By: [Signature]  
Name: Jagmohan Dhillon  
Title: Manager

**THIS DOCUMENT MUST BE NOTARIZED**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF Texas )  
 ) ss.  
COUNTY OF Collin )

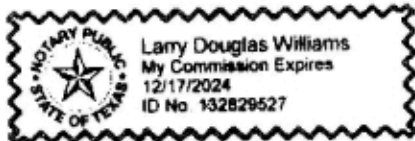
**SUBSCRIBED, SWORN TO, and ACKNOWLEDGED** before me on this 7<sup>th</sup> day of January, 2022, by Jagmohan Dhillon, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Manager of **D WOOD HOTEL, LLC**, a Utah limited liability company, and that said document was signed by him on behalf of said company by Authority of its Operating Agreement, and said Jagmohan Dhillon acknowledged to me that said company executed the same.

Witness my hand and seal.

My commission expires 12-17-2024

[Signature]  
Notary Public

(Notary Seal)



**EXHIBIT A**  
**LEGAL DESCRIPTION**

**Parcel 1:**

Beginning on the East line of a 66 foot street (800 West Street) at a point which is North 00°04'13" East 30.68 feet along the section line and North 89°56'35" West 176.885 feet from the Southeast corner of the Northwest quarter of Section 36, Township 2 North, Range 1 West, Salt Lake Base and Meridian (Davis County Bearing Base as shown on the Township Reference Plat and recorded as Entry No. 370752, September 28, 1972, in the Davis County Recorder's Office); and running thence North 00°03'25" East 230.00 feet along East line of said street; thence South 89°56'35" East 506.170 feet to the Westerly "No Access" Line of Interstate 15 and a point on a 7519.42 foot radius curve to the right; thence along the arc of said curve 212.178 feet, (chord bears South 28°45'22" West 212.178 feet) to a point on the "No Access" Line of the off ramp and a 1850.100 foot radius curve to the right; thence along the arc of said curve 52.021 feet (chord bears South 32°31'41" West 52.019 feet); thence North 89°56'35" West 376.350 feet to the point of beginning.

**Parcel 1A:**

Together with the use restrictions affecting the adjacent property as disclosed by that certain Declaration of Restrictive Covenant recorded June 13, 1990 as Entry No. 893690 in Book 1356 at page 143 and as amended by that certain Modification of Declaration of Restrictive Covenant recorded August 3, 1994 as Entry No. 1134668 in Book 1787 at page 525 and further amended by that certain Second Modification of Declaration of Restrictive Covenant recorded March 27, 1995 as Entry No. 1171500 in Book 1859 at page 312 of official records.