

Entry #: 569802

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FEE: \$40.00 BY: COTTONWOOD TITLE INSURANCE AGENCY

Jerry Houghton, Tooele County, Recorder

**WHEN RECORDED MAIL TO:**

Katten Muchin Rosenman, LLP  
550 S. Tryon Street, Ste 2900  
Charlotte, NC 28202-4213  
Attn: J. Hayden Howell

File No.: 154655-DMP

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

In Reference to Tax ID Number(s):

02-123-0-0043

THIS DOCUMENT WAS DRAFTED BY  
AND WHEN RECORDED RETURN TO:

Katten Muchin Rosenman, LLP  
550 S Tryon St Suite 2900  
Charlotte, NC 28202-4213  
Attention: J. Hayden Harrell

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

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made by **GRNOBL WESTERN ACRES, LLC**, a Utah limited liability company, with an address of c/o Grnobl Manager, LLC, 181 S 750 W, North Salt Lake, Utah 84054 ("Borrower"), to **COTTONWOOD TITLE INSURANCE AGENCY, INC.**, a Utah corporation ("Trustee"), for the benefit of **LOT LOAN LENDER I LLC**, a Delaware limited liability company with an address of c/o Setanta Development Capital, LLC, 4530 Park Road, Suite 230, Charlotte, North Carolina 28209 ("Lender").

WITNESSETH:

That Borrower, in the consideration of the premises and indebtedness stated and for the sum of Ten Dollars (\$10.00) to Borrower paid by the Trustee, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto Trustee, his heirs, successors and assigns, in trust with power of sale, all of the land, buildings, improvements, fixtures and personal property (all collectively referred to as the "Property") described below:

(a) All of those tracts or parcels of land located in Tooele County, Utah more particularly described in the attached Exhibit A, which is made a part hereof by reference together with all rights, privileges and interests appurtenant thereto (the "Land"). The Land is conveyed subject only to the encumbrances and other matters described in Exhibit B attached hereto and incorporated herein by reference.

(b) All buildings and improvements of every kind and description now or hereafter erected or placed on the aforesaid Land and all materials intended for

construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Property hereby conveyed immediately upon the delivery thereof to the above described Land, and all fixtures, equipment, machinery, and other articles of personal property located in or on the Land or in said buildings or improvements or used in the operation or enjoyment of the Land or said buildings and improvements, (including, but not limited to, all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, ranges, refrigerators, dishwashers, disposals, appliances, heating units, air conditioning units, washing machines, dryers, swimming pools, swimming pool equipment, maintenance equipment, awnings, shades, screens, blinds, carpeting, office equipment, tennis court equipment, clubhouse equipment and furnishings, furniture and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment) including all renewals thereof and all additions thereto and replacements thereof, and all articles in substitution thereof, and all proceeds of all the foregoing in whatever form ("Improvements").

(c) To the extent such general intangibles are assignable, all general intangibles relating to design, development, operation, management and use of the Land and Improvements, including, but not limited to, (1) all names under which or by which the Land and Improvements may at any time be owned and operated or any variant thereof, and all goodwill in any way relating to the Land or Improvements and all service marks and logotypes used in connection therewith, (2) all permits, licenses, authorizations, variances, land use entitlements, approvals, consents, clearances, and rights obtained from governmental agencies issued or obtained in connection with the Land or Improvements, (3) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the construction, use, occupation or operation of the Land or Improvements, (4) all materials prepared for filing or filed with any governmental agency, and (5) the books and records of Borrower relating to construction, or operation of the Improvements.

(d) All shares of stock or partnership interest or other evidence of ownership of any part of the Land and Improvements that is owned by Borrower in common with others, including all water stock relating to the Land, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Land or Improvements; provided, however, that the foregoing shall not include any ownership interests in the Borrower;

(e) All accounts, deposit accounts, tax and insurance escrows held pursuant to this Deed of Trust, accounts receivable, instruments, documents, documents of title, general intangibles, rights to payment of every kind including rights to payment under letters of credit (including proceeds of letters of credit), all of Borrower's rights, direct or indirect, under or pursuant to any and all construction, development, financing, guaranty, indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts, subcontracts, insurance policies, licenses and bonds now or anytime hereafter arising from construction on the Land or the use or enjoyment of the Land or Improvements, or any supporting obligations securing the payment or performance of any of the foregoing, to the extent such are assignable;

(f) All of Borrower's interest in and to all causes of action, claims, compensation, proceeds and recoveries for any damage or injury to the Land or Improvements or any part thereof or for any loss or diminution in value of the Land or Improvements;

(g) All condemnation proceeds and insurance proceeds related to the Land or Improvements;

(h) All articles of personal property now or hereafter attached to, placed upon for an indefinite term or used in connection with the Land or Improvements, appurtenances to the Land and the Improvements together with all goods and other property which are or at any time become so related to the Land that an interest in them arises under real estate law as fixtures.

(i) All additions to, substitutions for and the products of all of the above, and all proceeds therefrom, whether cash proceeds or noncash proceeds, received when any such property (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily. Such proceeds shall include any of the foregoing specifically described property of Borrower acquired with cash proceeds. Together with, and without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Chattel Paper, General Intangibles, Letter of Credit Rights and Supporting Obligations arising from or used in connection with the Land or Improvements, as those terms are defined in the Uniform Commercial Code from time to time in effect in the state in which the Land is located.

(j) All of the above property which is or shall be attached or affixed in any way to the Land above described or the improvements now or hereafter located thereon shall be deemed to be fixtures and part of the real estate hereby conveyed (hereinafter, "Fixtures") and that all other equipment or property not so affixed or attached shall be deemed to be personal property (hereinafter, "Personal Property") and, as to such property, this Deed of Trust shall be considered a security agreement which creates a security interest in such personal property in favor of the Lender. As additional security hereunder, Borrower hereby assigns to the Lender all rents, royalties, issues, profits and income from the Property from time to time accruing reserving only the right to Borrower to collect the same as long as Borrower is not in default hereunder.

TO HAVE AND TO HOLD the Property, together with all privileges, hereditaments, easements, rights of way and appurtenances thereunto belonging and the rents, issues, royalties and profits thereof to said Trustee, its heirs, successors and assigns forever, upon the trusts, terms and conditions, and for the uses, hereinafter set forth.

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, as hereinafter defined, together with all interest (including without limitation any interest due because of negative amortization provisions in the Note) thereon, as therein provided and all renewals, substitutions and modifications thereof; (b) the performance of all of the covenants and agreements of Borrower contained in the Note and the Loan Agreement, as hereinafter defined, or contained in any other Loan Documents described in the Loan Agreement (the "Loan

Documents"); (c) the performance of the covenants and agreements of Borrower herein contained and the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and (d) the repayment of any future advances, with interest thereon, made pursuant to the Note and the Loan Agreement.

Borrower and Lender covenant, represent, warrant and agree as follows:

## ARTICLE 1

### THE LOAN; FUTURE ADVANCES

1.1 Note. Borrower has, for value received, executed and delivered to Lender a Promissory Note (the "Note") of even date herewith in the amount of up to Twelve Million Eight Hundred Twenty Thousand and No/100 (\$12,820,000.00) with interest as provided in the Note. The Note provides for monthly payments computed at various interest payment rates that may be less than the actual interest accrual rate in effect during the term of the Loan. The Note provides that in the event any monthly payment of interest is insufficient to pay all interest that accrued during the previous month, then the amount of such unpaid interest shall at the end of each month be added to principal and shall thereafter earn interest until paid at the interest accrual rate in effect under the Note.

1.2 Loan Agreement. The Note is made pursuant to a Loan Agreement between the parties of even date herewith (the "Loan Agreement"). The terms of the Loan Agreement are herein incorporated by reference and made a part of this Deed of Trust. Capitalized terms not defined herein shall have the meaning ascribed to them in the Loan Agreement.

1.3 Other Security Instruments. Payment of the Note is further secured by any other Loan Documents executed and delivered this date by Borrower to Lender.

1.4 Future Advances; Protection of Property. This Deed of Trust shall secure any additional loans as well as any and all present or future advances, readvances and other future obligations incurred under the Loan Documents made by Lender to or for the benefit of Borrower or the Property, to the fullest extent permitted by applicable law, including, without limitation: (a) principal, interest, late charges, fees and other amounts due under the Loan or this Deed of Trust; (b) all advances by Lender to Borrower or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Lender for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Lender for the enforcement and protection of the Property or the lien of this Deed of Trust; and (d) all legal fees, costs and other expenses incurred by Lender by reason of any default or otherwise in connection with the Loan. The maximum principal amount, including present and future loans, which may be secured hereby at any one time shall not exceed twice the amount secured by the Note. The time period within which such future Loan may be incurred and such future advances may be made shall not extend for more than thirty (30) years from the date of this Deed of Trust. Borrower and Lender agree that such future advances or loans shall be secured by this Deed of Trust regardless of whether such future

advances or loans are evidenced by a written instrument stipulating that such obligation is secured hereby.

Borrower agrees that if, at any time during the term of this Deed of Trust or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Borrower fails to perform or observe any covenant or obligation under this Deed of Trust including, without limitation, payment of any of the foregoing, Lender may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Lender shall be added to the amount secured by this Deed of Trust and the other Loan Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with interest at the default rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof.

## ARTICLE 2

### BORROWER'S COVENANTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS

Borrower, by its execution hereof, does hereby make to Lender the following covenants, representations, warranties and agreements:

2.1 Title to Property. Borrower warrants (subject only to the encumbrances and other matters accepted by Lender and specifically described in the title insurance policy insuring the lien created by this Deed of Trust) that it has good indefeasible title to the Property in fee simple and is lawfully seized and possessed of the Property and every part thereof and has the right to convey the same; that this Deed of Trust constitutes a valid, enforceable and subsisting first lien deed of trust on the Land, the improvements thereon and other Fixtures, and a valid, enforceable and subsisting first lien security interest in the Personal Property, all in accordance with the terms hereof; that the Property is unencumbered; and that Borrower will forever warrant and forever defend the title to the Property against the claims of all persons whomsoever.

If the title of Trustee to, or the interest of Lender in, the Property hereby conveyed, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, Borrower hereby authorizes Lender, at Borrower's expense, to take all necessary and proper steps for the defense of such title or interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such title or interest in the Property. Borrower will indemnify and hold Lender and Trustee harmless from and against any and all loss, cost, damage, liability or expense (including all court costs and attorneys' fees) incurred by Lender or Trustee in protecting its interests hereunder in such an event.

2.2 Performance of Note, Loan Agreement and Deed of Trust. Borrower will pay all sums, including interest, when due as provided in the Note, or as provided in any extension or renewal thereof, and all other sums required to be paid under this Deed of Trust, or under the covenants, terms and conditions of any other of the Loan Documents described or referred to in the Loan Agreement. Borrower will further perform all of the covenants, terms and conditions of the Note, the Loan Agreement, and all such other Loan Documents.

2.3 Organization and Power. Borrower warrants that (a) it is a limited liability company duly organized, existing and in good standing under the laws of Utah and all certificates of partnership, or articles of organization, or articles of incorporation and all certificates of assumed or business name required to be filed in the State of Utah or otherwise, have been duly filed and Borrower has complied with all other conditions prerequisite to its doing business in the State of Utah; (b) Borrower's charter, articles of incorporation and by-laws, or articles of organization and operating agreement, or agreement of partnership and any certificates of assumed or business name together with all other resolutions and other documents and certificates of Borrower requested by Lender previously have been delivered to Lender and are in full force and effect and have not been amended or changed; (c) no proceeding is pending, planned or threatened for the dissolution or annulment of Borrower; (d) all licenses, filing fees, income and other taxes due and payable by Borrower have been paid in full; (e) Borrower has all requisite power and authority to own, lease, operate and encumber the Property and to carry on its business as now being, and as proposed to be, conducted; and (f) Borrower will preserve and keep in full force and effect its existence, rights, franchises and trade names.

2.4 Validity of Documents. Borrower warrants that the execution, delivery and performance by Borrower of this Deed of Trust, the Note and all other Loan Documents, and the borrowing evidenced by the Note (a) have been duly authorized by all necessary partnership, limited liability company or corporate action in accordance with the agreement of partnership, articles of incorporation and by-laws, or articles of organization and operating agreement of Borrower; (b) have received all (if any) requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof; and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement (as defined in Paragraph 2.10 below) or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon Borrower's or other liable party's property or assets, except as contemplated by the provisions of the Loan Documents. The Loan Documents constitute legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms, and Borrower has full and lawful authority to bargain, grant, sell, mortgage, assign, transfer and convey all of the Property as set forth herein.

2.5 Information. Borrower warrants that all information, reports, papers and data given to Lender with respect to Borrower or with respect to the Property are accurate, complete and correct in all material respects and do not omit any fact the inclusion of which is necessary to prevent the facts contained therein from being materially misleading.

2.6 Taxes and Other Payments. Borrower warrants that Borrower has filed all federal, state, county, municipal and city income and other tax returns required to have been filed by them and have paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by them except to the extent that the same are being contested in good faith, and Borrower does not know of any basis for any additional assessment in respect of any such taxes. Borrower has paid or will pay as the same become due all sums owing or claimed for labor, material, supplies, Fixtures and Personal Property and services of every kind and character used, furnished or installed in the Property, and no claim for same currently exists or will be permitted to become past due except to the extent that Borrower is contesting the amount or

validity thereof and following the termination of such contest Borrower shall pay all such sums as may be found to be owing.

2.7 Litigation. Borrower warrants that there are no actions, suits or proceedings pending or threatened against or affecting Borrower, or the Property or involving the validity or enforceability of this Deed of Trust or any other Loan Document or the priority of the lien and security interest of this Deed of Trust or any other Loan Document, and no event has occurred (including specifically Borrower's execution of the Loan Documents and its consummation of the loan represented thereby) which will violate, be in conflict with, result in the breach of or constitute (with due notice or lapse of time, or both) a default under, any Legal Requirement (as defined in Paragraph 2.10 hereof) or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Borrower's or any Guarantor's property other than the lien and security interest created by the Loan Documents.

2.8 Payment of Impositions. Borrower will pay as they become due all taxes, general and special assessments, insurance premiums on policies as required by Lender under Paragraph 2.9 hereof, permits, inspection fees, license fees, all water and sewer charges and all other charges and costs of any kind and nature whatsoever, now existing or hereafter arising, asserted, levied or imposed against Borrower, the Property or the ownership, use or occupancy of the Property (collectively, "Impositions"), and Borrower, upon request of Lender, will submit to Lender receipts evidencing such payments. Borrower shall, however, have the right to contest the amount or validity of any such charge or assessment so long as such contest is conducted in good faith and is continued diligently to conclusion. To secure the payment of the Impositions, Lender, at Lender's option following the occurrence of a Default or an Event of Default, may require Borrower to deposit with Lender monthly installments of sums equal to (in the estimation of Lender) one-twelfth (1/12) of the total of all annual Impositions. Said deposits will be held by Lender free of interest and free of any liens or claims on the part of creditors of Borrower and are to be used by Lender (except upon the occurrence of an Event of Default as set forth below) to pay current Impositions as the same accrue and are payable. Said deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. If said deposits are insufficient to pay the Impositions in full as the same become payable, Borrower will deposit with Lender such additional sum or sums as may be necessary. If an Event of Default shall have occurred, however, Lender shall have the additional option of crediting the full amount of the deposited sums against the indebtedness secured hereby. Notwithstanding anything to the contrary contained in this Paragraph 2.8 or elsewhere in this Deed of Trust, Lender hereby reserves the right to waive the payment by Borrower to Lender of the deposited sums and, in the event Lender does so waive such payment, it shall be without prejudice to Lender's right to insist at any subsequent time or times that such payments be made in accordance herewith.

If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust or any rights, titles, liens or security interests created hereby or upon the Note, or any part thereof, Borrower shall immediately pay all such taxes, and Lender shall have the right to require monthly deposits therefor as set forth above.

2.9 Maintenance of Insurance; Application of Insurance Proceeds.



(a) Borrower shall keep the improvements now existing or hereinafter erected on the Land and the Fixtures and Personal Property referred to above fully insured for the benefit of Lender in accordance with the terms and provisions of Section 4.4 of the Loan Agreement.

(b) All insurance policies shall be in a form acceptable to Lender and shall include a standard mortgagee clause in favor of Lender. Borrower shall deliver the policies of insurance and any renewals thereof to Lender. Evidence of renewal of such policies shall be delivered to Lender at least ten (10) days before any renewal date, and all insurance policies shall include provisions requiring the carriers to give Lender at least fifteen (15) days notice of non-payment prior to the termination or expiration of coverage.

(c) In the event of loss under any such policies, Borrower shall give immediate written notice to the insurance carrier and to Lender. In the event any such loss occurs, Lender shall be entitled to receive and retain all insurance proceeds to be applied by Lender, at Lender's option, either (a) upon any indebtedness secured hereby in such order as Lender may determine or (b) to payment for the replacing, repairing or restoring the improvements partially or totally destroyed to a condition and upon such terms of payment as may be satisfactory to Lender. Notwithstanding the foregoing, if a loss occurs and (x) the Borrower is not in default hereunder and no condition or circumstance exists which but for the giving of notice and passage of time would constitute an Event of Default, and (y) the damage or destruction is capable of repair or replacement within the remaining term of the Loan, then Lender agrees that, instead of applying the insurance proceeds to the indebtedness secured hereby, it will hold any such insurance proceeds paid with respect to the loss and disburse the same to cover the costs of the repair or restoration of the Property provided that Borrower complies with all of the following conditions within sixty (60) days after the occurrence of such damage or destruction:

(i) Borrower executes and delivers to Lender a contract with a contractor acceptable to Lender (or if such loss occurs prior to the completion of the initial construction a change order to the existing contract) setting forth a fixed price for the repair or restoration of the Property to a condition as nearly as comparable to the condition of the Property as existed prior to the loss as possible and providing for a completion date satisfactory to Lender in Lender's sole discretion;

(ii) Borrower delivers to Lender an amount of money equal to the amount by which the fixed price set forth in said contract or change order exceeds the insurance proceeds which amount shall be added to the insurance proceeds and held by Lender to be disbursed in the same manner as the insurance proceeds; and

(iii) Borrower otherwise complies with the terms and conditions of the Loan Agreement and this Deed of Trust during the performance of such repair or restoration.

(d) Provided that all of the foregoing are met, then the insurance proceeds and Borrower's deposit, if any, shall be disbursed to Borrower (or if Lender elects to the contractor engaged to perform such repair or restoration) as the repair and restoration progresses with such disbursements being made on the basis of the degree of completion of such work. If Borrower shall default hereunder after the commencement of such repair or restoration, or shall fail to diligently pursue and complete such repair or restoration promptly, then Lender may immediately apply the remainder of the insurance proceeds and any deposits of Borrower to the indebtedness secured hereby. Lender shall not be required to disburse from such proceeds any amounts in excess of the actual costs of restoration or repair. After the completion of such restoration and repair the balance remaining in such account, if any, shall, at Lender's option, be applied against the indebtedness secured hereby except that if Borrower has been required to make a deposit with respect to such restoration then any remaining funds in such account shall, upon the completion of restoration, be disbursed to Borrower to the extent of Borrower's deposit, prior to the application thereof to the indebtedness due hereunder. It is intended that no trust shall be created by the receipt by Lender of any insurance proceeds, but only a debtor-creditor relationship for an amount not in excess of such proceeds; nor shall there be any obligation on Lender to pay any interest on the insurance proceeds or any additional deposits made by Borrower.

(e) Borrower hereby assigns to Lender all monies recoverable under each such insurance policy and authorizes each insurance company to make payment for all such losses directly to Lender instead of to Lender and Borrower jointly. In the event any insurance company fails to disburse insurance proceeds directly and solely to Lender but disburses instead either to Borrower alone or to Borrower and Lender jointly, Borrower agrees immediately to transfer and endorse such proceeds to Lender, and upon any failure of Borrower to do so, Lender may execute such transfers and endorsements for and in the name of Borrower and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact for such purposes. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any insurance or other proceeds lawfully or equitably payable to Lender in connection with the transaction contemplated by the Loan Documents and the collection of any indebtedness or obligation of Borrower to Lender incurred thereunder. At Lender's option, Lender shall be entitled and Borrower hereby authorizes Lender at Borrower's expense, to take all necessary and proper steps (including, without limitation, the engaging, at Borrower's expense, of appraisers to conduct independent appraisals on behalf of Lender and the engaging, at Borrower's expense, of attorneys and other professionals and consultants) to obtain any insurance or other proceeds, and Lender is hereby authorized and entitled to compromise or adjust any loss under any such insurance policy.

(f) Upon any foreclosure of this Deed of Trust or any sale of the Property in lieu thereof, Lender shall become the owner of all insurance policies on the Property, and Borrower hereby irrevocably appoints Lender as its attorney-in-fact to assign each such policy in such event.

2.10 Maintenance of Property. Borrower will keep and maintain the Property and every part thereof in good repair and condition and shall from time to time make all needful and

necessary replacements thereto. Borrower will not commit or suffer any waste to the Property and will comply with, or cause to be complied with, all present and future judicial decisions, rulings, rules, regulations, permits, statutes, ordinances, and other requirements of any government authority and all restrictions, covenants and agreements relating to the Property or any part thereof or to the operation thereof ("Legal Requirements"). Borrower shall insure that all activities and operations on the Land are in compliance with all Legal Requirements. Lender and any persons authorized by Lender shall have the right to enter and inspect the Property at all reasonable times, and access thereto shall be permitted for that purpose.

2.11 Use of Property. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Deed of Trust was executed. Borrower shall not initiate or acquiesce in changes of the zoning classification of the Property without Lender's prior written consent. Borrower shall not discontinue the operation of the Improvements as a residential development. Borrower shall, itself or through managing agents acceptable to Lender, cause the Property to be operated in all respects in a first-class manner comparable to first quality residential housing development in Tooele County, Utah. Lender, in its sole discretion, shall have the right to approve in advance any and all management companies or agents selected by Borrower to manage the Property and to approve the management contract and fees payable thereunder. Borrower shall not enter into any management agreement with any management company or agent with respect to the Property without first having obtained Lender's consent.

2.12 Maintenance and Enhancement of Value of Property. Borrower shall, at all times, use its best efforts and take all reasonable actions necessary or appropriate to increase the value of the Property, and Borrower shall not take nor fail to take any reasonable action if such act or failure to act shall cause the Property to decrease in value.

2.13 Notice of Condemnation. Borrower shall give Lender notice that condemnation proceedings have been commenced or the threat of condemnation has been asserted within five (5) days after Borrower has been notified thereof.

2.14 Access to Records. Borrower shall, at all times, permit Lender or its authorized representatives, from time to time, during business hours, to inspect, audit, review and make copies of all contracts, leases, invoices, cancelled checks and all books and records of Borrower pertaining to the acquisition, development, operation and completion of the Property.

2.15 Alterations. Borrower shall not make or permit to be made any alterations, additions or improvements to the buildings or improvements located or to be located on the Property of any material nature without the prior written approval of Lender.

2.16 No Compensation to Borrower or Affiliates. Except as may be specifically permitted by the Loan Agreement, neither Borrower nor any affiliate of Borrower shall receive any compensation or fee for any services provided in connection with the Property without the prior written consent of Lender.

2.17 Lender's Performance of Defaults. If Borrower shall fail to pay any of the Impositions when due, or if Borrower fails to construct the Improvements in accordance with the Loan Agreement or if Borrower fails to maintain the Property in a good state of repair and condition, and to operate the same as a residential development project or shall otherwise fail to perform any of the covenants, agreements and conditions by Borrower to be kept and performed hereunder or under any of the Loan Documents, Lender, at its option, and without waiving its right to consider such failure a default entitling it to all remedies and privileges hereinafter set forth, may, but shall not be obligated to, remedy, remove or cure any such default, or pay any sum of money necessary for the performance of such covenants, agreements and conditions, or for the curing or removal of any such default, and incur all expenses and obligations reasonably necessary in connection therewith, including attorneys' fees. Any and all sums so paid by Lender shall be considered as additional and overdue installments payable under the Note; shall bear, until paid, interest at the rate specified in the Note, but in no event to exceed the highest legal interest rate; shall be part of the indebtedness secured by this Deed of Trust and a lien upon the Property; and shall, with interest as aforesaid, be repaid by Borrower to Lender forthwith upon demand. All such payments made by Lender under this paragraph shall constitute payments for the protection and preservation of Lender's security.

2.18 Further Instruments. Borrower shall execute and deliver to Lender and to any subsequent holder, upon demand, any further instrument or instruments, including, but not limited to, deeds of trust, security agreements, financing statements, fixture filings, assignments, and renewal or substitution notes, necessary to reaffirm, correct or perfect the evidence of the obligation hereby secured and the legal security title and lien of the Lender to all or any part of the Property intended to be hereby conveyed, whether now conveyed, later substituted for, or acquired subsequent to the date of this Deed of Trust, and all extensions or modifications thereof. Borrower shall also cause each Guarantor to execute and deliver to Lender and any subsequent holder upon demand, any further guaranty or related agreements for any such purposes. Borrower hereby irrevocably appoints Lender and Trustee as its agents and attorneys-in-fact to execute and deliver all such instruments, including any financing statement or fixture filing, and to record and file any of the same as Lender may deem necessary or desirable.

2.19 Application of Payments. Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Deed of Trust or any other of the Loan Documents shall be applied by Lender in such order of priority determined by Lender in its sole discretion.

2.20 Books and Records. Borrower shall keep and maintain at all times at Borrower's address stated in Paragraph 7.2 below or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the status of the construction and development of the Property and of the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender and any person designated by Lender and shall be in such form or forms as may be acceptable to the Lender. Borrower also shall provide (and cause each Guarantor to provide) Lender with all of the statements, documents and other information required by the Loan Agreement and all other Loan Documents.

2.21 Condemnation Awards. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking of the Property or any part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed or consented to by Lender in writing. At Lender's option, Lender shall be entitled, and Borrower hereby authorizes Lender at Borrower's expense, to take all necessary and proper steps (including, without limitation, the engaging, at Borrower's expense, of appraisers to conduct independent appraisals on behalf of Lender and the engaging of attorneys and other professionals and consultants) to appear in, prosecute, compromise and discharge any such action or proceeding. As further security for the payment of the indebtedness and performance of the obligations, covenants and agreements secured hereby, Borrower hereby assigns to Lender all judgments, awards or damages or settlements hereafter made resulting from condemnation proceedings or in lieu of any taking of the Property or any part thereof under the power of eminent domain, or for any damage, whether caused by such taking or otherwise, to the Property, including the improvements thereon, or any part thereof, or of any streets appurtenant thereto, including any award for change of grade of streets. Lender shall have the right either (i) to apply any such sums or any part thereof so received after payment of all of its expenses, including costs and reasonable attorneys' fees, to the indebtedness secured hereby or (ii) apply all or any part of any amount received to the restoration or repair of the Property, in such manner as it elects in its sole discretion.

2.22 Security Interest in Fixtures and Personal Property. This Deed of Trust is intended to be a security agreement and fixture filing pursuant to the Utah Uniform Commercial Code for the items of Fixtures and Personal Property described above, and Borrower hereby grants Lender a first and prior security interest in said items. Borrower agrees that Lender may file this Deed of Trust, or a reproduction thereof, or any other document or form as a financing statement for the Personal Property. With respect to the Fixtures, this Deed of Trust shall constitute a financing statement filed as a fixture filing and the lien upon the Fixtures herein granted shall be in addition to, and not in lieu of, any lien upon the Fixtures acquired under real property law. Borrower is a limited liability company organized under the laws of the State of Utah, and is qualified to do business in the State of Utah. Borrower hereby authorizes Lender to file such financing statements and any renewals thereof in such form as Lender may require to perfect a security interest hereunder. In the event of default under this Deed of Trust, Lender shall be entitled to exercise all rights and remedies of a secured party under the Utah Uniform Commercial Code and may proceed as to the Personal Property and Fixtures in the same manner as provided herein for the real property. The real property to which the Fixtures relate is described in Exhibit A attached hereto.

2.23 Estoppel Certificates. Borrower shall, within ten (10) business days of any written request from Lender, furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Deed of Trust and any right of setoff, counterclaim or other defense which exists against such sums and the obligations of this Deed of Trust.

2.24 Borrower and Lien Not Released. Borrower agrees that no release by Lender of any of Borrower's successors in title from liability on the Note, no release by Lender of any portion of the Property, no subordination of lien, no forbearance on the part of Lender to collect on the Note or any part thereof, no waiver of any right granted or remedy available to Lender, no failure by Lender to take any additional security and no action taken or not taken by Lender shall

in any way diminish Borrower's obligations to Lender or have the effect of releasing Borrower, or any successor to Borrower, from full responsibility to Lender for the complete discharge of each and every of Borrower's obligations hereunder or under the Note, the Loan Agreement or any other Loan Document. Borrower hereby waives any rights or remedies on account of any extensions of time, releases granted or other dealings between Lender and any subsequent owner of the Property as said activities are contemplated or otherwise addressed in N.C. Gen. Stat. Sec. 45-45.1 or any similar or subsequent law.

#### 2.25 Leases of the Property.

(a) Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property (herein referred to, whether one or more, as the "Lease" or the "Leases").

(b) If applicable, Borrower shall (i) submit a copy of the form Lease which is to be executed by all of Borrower's prospective lessees and tenants to Lender for its approval prior to its use, and Borrower shall not use any other lease and shall not amend, modify, alter or change the approved form without the prior written consent of Lender, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon it under each of the Leases, (iii) not voluntarily terminate, cancel, waive, modify or amend its rights or the obligations of any party under any of the Leases, (iv) not accept any prepayment of rent or installments of rent for more than two months in advance, (v) use all reasonable efforts to maintain each of the Leases in full force and effect during the full term hereof, and (vi) appear and/or defend any action or proceeding arising under or in any manner connected with any of the Leases or the representations, warranties, covenants and agreements of it or of any other party or parties thereto.

(c) Lender shall, at any time subsequent to an Event of Default, have the right to collect all rents, incomes and other sums due and owing from the Property directly from any lessee or tenant and may at any such time contact each and every such lessee or tenant and any other party obligated on the Leases, informing them to make payment of all sums due and owing Borrower directly to Lender to the credit of Borrower. Upon the occurrence of any Event of Default, Lender may demand, sue for, compromise and collect any rents, either under its own name or in the name of Borrower, with or without the consent of Borrower. Lender may also establish a post office box in the name of Lender to which all rents and other income from the Property shall be sent at the direction of Lender made to the lessees, tenants or other parties renting, leasing or otherwise using the Property. At Lender's request, all future leases of the Property shall specifically provide that such leases are subordinate to this Deed of Trust, that the tenant attorns to Lender, and that the attornment of the tenant shall not be terminated by foreclosure or any sale in lieu thereof.

2.26 Replacement of Fixtures and Personal Property. Borrower will not, without the prior written consent of Lender, permit any of the Fixtures or Personal Property to be removed at any time from the Land or improvements thereon unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of

equal suitability and value, owned by Borrower free and clear of any lien or security interest except such as may be first approved in writing by Lender.

2.27 No Transfers or Further Encumbrances. Borrower will not, without the prior written consent of Lender, permit any transfers or encumbrances of any of the Property or of any direct or indirect interest in Borrower except as specifically permitted by the Loan Agreement.

2.28 Performance of Contracts; Payments for Labor and Materials. Borrower shall pay when due all bills for services or labor performed and materials supplied in connection with the development of the Land and the construction of the Improvements, except for bills being contested in accordance with the terms of the Loan Documents. In the event Borrower fails to discharge or bond any Mechanics' Lien, Lender may, at its option, in addition to, and not in limitation of, all other rights and remedies of Lender in the Event of Default by Borrower, and without regard to the priority of said Mechanics' Lien, pay the same, and all amounts expended by Lender for such purpose shall constitute loans to Borrower and shall be secured by this Deed of Trust and the other Loan Documents, and be due and payable forthwith by Borrower to Lender with interest thereon at the Default Rate.

### ARTICLE 3

#### EVENTS OF DEFAULT

The occurrence of any of the events described in Paragraphs 3.1 through 3.10 and the continuance of such event uncured or unremedied to Lender's satisfaction prior to the expiration of the applicable grace period (including, but limited to, any notice and cure periods contained in the Loan Agreement), if any, as provided below shall constitute an "Event of Default" under the terms of this Deed of Trust.

3.1 Nonpayment. Failure of Borrower to pay when and as due any installment of principal or interest or any other payment required under the Note or any renewal or extension thereof or any other indebtedness secured hereby.

3.2 Default Hereunder or Under the Loan Agreements. Failure by Borrower to duly observe any covenant or agreement included in this Deed of Trust or in the Note, the Loan Agreement, or any other Loan Document and the invalidity or inaccuracy of any warranty, representation or opinion included herein or therein, or the occurrence of an Event of Default under the Loan Agreement.

3.3 Superior Liens. If any judgment, lien or security instrument shall exist having priority superior to this Deed of Trust; or if for any reason this Deed of Trust, in the opinion of counsel for Lender, shall not constitute a first, prior and enforceable lien upon all of the Property or if the status of the Deed of Trust as a first and prior lien on the Property shall be challenged or endangered by any party whatsoever and the title insurance company issuing the title policy shall deny coverage.

3.4 Judgment or Levy on Assets. If any final money judgment shall be rendered against Borrower, the Guarantors or any other liable party and the same shall not be paid or execution on the same shall not be stayed by perfection of an appeal or other appropriate action

within ten (10) days; or if there shall occur a levy on any of the assets of the Borrower or any of the Guarantors.

3.5 Foreclosure of Other Liens. If the holder of any lien or security interest on the Property (without implying Lender's consent to the existence, placing, creating or permitting of any lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

3.6 Remedies. Upon the occurrence of any one or more of the above mentioned Events of Default, Lender shall have the right, at its election, to declare the Note to be forthwith due and payable without further notice, presentment, demand or protest of any kind, all of which are hereby expressly waived by Borrower. Then, and in that event, the entire amount of said principal indebtedness, together with any and all sums paid for account of Borrower in accordance with the provisions set forth, shall, at the option of Lender, then and thereby become and be due and payable forthwith, with accrued interest, and all expenses and costs of collection, including reasonable attorney's fees, and the amount of such costs, expenses and fees shall be added to the amount of the debt hereby secured as part thereof, and as such shall also be covered by the security of this Deed of Trust.

Moreover, upon the occurrence of one or more of the above mentioned Events of Default, and without any further notice thereof to Borrower by Lender, any obligation of Lender to advance funds hereunder, and all other obligations (if any) of Lender hereunder, shall immediately cease and terminate unless and until Lender shall reinstate same in writing; however, Borrower shall continue to be obligated under the Loan Documents.

#### ARTICLE 4

#### FORECLOSURE

4.1 REMEDIES OF LENDER. Subject to the provisions of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default under the terms of the Loan Agreement, in addition to any rights and remedies provided for in the Loan Agreement, and to the extent permitted by applicable law, the following provisions apply:

(a) Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure. After the lapse of such time as may then be required by *Utah Code Annotated* § 57-1-24 or other applicable law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by *Utah Code Annotated* § 57-1-25 and § 57-1-26 or other applicable law, Trustee, without demand on Borrower, shall sell the Property on the date and at the time and place designated in the notice of sale, in such order as Lender may determine (but subject to Borrower's statutory right under *Utah Code Annotated* § 57-1-27 to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale or on such other terms as are set forth in the notice of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public



declaration thereof by such person at the time and place last appointed for the sale; *provided*, if the sale is postponed for longer than forty-five (45) days beyond the date designated in the notice of sale, notice of the time, date, and place of sale shall be given in the same manner as the original notice of sale as required by *Utah Code Annotated* § 57-1-27. Trustee shall execute and deliver to the purchaser a Trustee's Deed, in accordance with *Utah Code Annotated* § 57-1-28, conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Trustee shall apply the proceeds of the sale as follows:

*First:* To the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees actually and reasonably incurred not to exceed the amount which may be provided for in the trust deed.

*Second:* To payment of the obligations secured by this Security Instrument.

*Third:* The balance, if any, to the person or person's legally entitled to the proceeds, or Trustee, in the Trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place, in accordance with *Utah Code Annotated* § 57-1-29.

Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Lender may bid for and acquire the Property, whether by payment of cash or by credit bid in accordance with *Utah Code Annotated* § 57-1-28(1)(b). In the event of a successful credit bid, Lender shall make settlement for the purchase price by crediting upon the Obligations of Borrower secured by this Security Instrument such credit bid amount. Lender, upon so acquiring the Property or any part thereof, shall be entitled to hold, lease, rent, operate, manage, and sell the same in any manner provided by applicable laws. For purposes of *Utah Code Annotated* Section 57-1-28, Borrower agrees that all default rate interest and late charges, if any, owing from time to time under the Note shall constitute a part of and be entitled to the benefits of Lender's lien upon the Property, and (ii) Lender may add all default rate interest and late charges, if any, owing from time to time under the Note to the principal balance of the Note, and in either case Lender may include the amount of all unpaid late charges in any credit bid Lender may make at a foreclosure sale of the Property pursuant to this Security Instrument.

In the event of any amendment to the provisions of *Utah Code Annotated* Title 57 or other provisions of *Utah Code Annotated* referenced in this Security Instrument, this Security Instrument shall, at the sole election of Lender, be deemed amended to be consistent with such amendments or Lender may elect not to give effect to such deemed amendments hereto if permitted by applicable law.

(b) Election to Foreclose as a Mortgage. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the option to declare all sums

secured hereby immediately due and payable and foreclose this Security Instrument in the manner provided by law for the foreclosure of mortgages on real property, and Lender shall be entitled to recover in such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees and disbursements in such amount as shall be fixed by the court. Borrower hereby waives all rights to the marshalling of Borrower's assets encumbered by this Security Instrument to the fullest extent permitted by law, including the Property, or any portion thereof, and all rights to require the Property to be sold in several parcels. The proceeds or avails of such a sale pursuant to the foreclosure of this Security Instrument as a mortgage shall first be applied to pay all reasonable fees, charges, costs of conducting such sale and advertising the Individual Property, and attorneys' fees as herein provided, second to pay to Lender the then outstanding amount of the Debt with interest at the applicable rate set forth in the Note, and third to the Person so entitled. Lender may purchase all or any part of the Property at such sale. Any purchaser at such sale shall not be responsible for the application of the purchase money. During any redemption period subsequent to such sale, the amount of Lender's bid entered at such sale shall bear interest at the Default Rate.

(c) Deficiency. Borrower agrees to pay any deficiency arising from any cause, to which Lender may be entitled after applications of the proceeds of any trustee's sale, and Lender may commence suit to collect such deficiency in accordance with *Utah Code Annotated* § 57-1-32 or other applicable law. Borrower agrees for purposes of *Utah Code Annotated* § 57-1-32 that the value of the Property as determined and set forth in an MAI appraisal of the Property as obtained by Lender on or about the date of the sale or the recording of a notice of default and election to sell shall constitute the "fair market value" of the Property for purposes of *Utah Code Annotated* § 57-1-32.

(d) Obligation Secured. For purposes of *Utah Code Annotated* Sections 57-1-32 and 57-1-28, the total indebtedness secured by this Security Instrument shall include all amounts payable by Borrower hereunder, including any increased rate of interest, any defeasance or prepayment payments or other amounts or obligations, all of which shall constitute "beneficiary's lien on the trust property".

(e) One Action Rule and Deficiency Statute. Borrower knowingly waives, to the fullest extent permitted by applicable law, the rights, protections and benefits afforded to Borrower under *Utah Code Annotated* §§ 78B-6-901 and 57-1-32 and any successor or replacement statute or any similar laws or benefits.

(f) Reinstatement. If Borrower, Borrower's successor in interest, or any other person having a subordinate lien or encumbrance of record on the Property, reinstates this Security Instrument and the Loan within three (3) months of the recordation of a notice of default in accordance with *Utah Code Annotated* § 57-1-31(1), such party shall pay to Lender the reasonable cancellation fee contemplated by *Utah Code Annotated* § 57-1-31(2), as determined by Lender, in accordance with its then current policies and procedures, whereupon Trustee shall record a notice of cancellation of the pending trustee's sale.

4.2 Foreclosure Commenced But Not Completed. In case foreclosure is commenced, but not completed, Borrower shall pay to Trustee all expenses incurred by Trustee and a partial commission in accordance with the following schedule: one percent (1%) of the principal balance of the Note if foreclosure is terminated before Trustee issues a notice of hearing on the right to foreclose; two percent (2%) of the principal balance of the Note if foreclosure is terminated after issuance of said notice; three percent (3%) if foreclosure is terminated after such hearing; and the full commission after the initial sale.

4.3 Foreclosure Sale. At such sale Lender may bid for and acquire any part of the Property and in lieu of paying cash therefor may take settlement of the purchase price by a credit upon the sums due and payable under and secured by this Deed of Trust the net sales price which shall be the proceeds of sale after deducting therefrom the expenses referred to above. If there be any sale of the Property herein conveyed, Borrower or any person in possession of the Property, as tenant or otherwise, shall become a tenant at will of the purchaser at such sale and may be removed by writ of ejectment, summary ejectment, writ of possession or other lawful statutory or common law remedy. If at the time of sale Trustee deems it best for any reason to postpone or continue the same from time to time, he may do so, and no failure or failures of Lender or Trustee to exercise the rights hereinabove granted, nor any acts or omission, nor any lapse of time shall be construed to be a waiver of any right hereunder, if the rights shall have once accrued. The power of sale above granted may be exercised at different times as to different portions of the Property. Any recital of fact by Trustee in its deed relative to default of Borrower or to notice, advertisement and sale in accordance with law shall be received as prima facie evidence of such fact.

4.4 Trustee's Right to Take Possession.

(a) Upon the occurrence of any Event of Default, Borrower upon demand of Trustee or Lender, shall forthwith surrender to Trustee or Lender actual possession of the Property and, to the extent permitted by law, Trustee, Lender or both, or such officers or agents as either or both of them may appoint, may enter and take possession of all or any portion of the Property, with or without the appointment of a receiver, or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower.

(b) If Borrower shall for any reason fail to surrender or deliver possession of the Property or any part thereof after such demand by Trustee or Lender, either or both of them may obtain a judgment or decree conferring upon Trustee and/or Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Property and such books, papers and accounts to Trustee and/or Lender, the entry of which judgment or decree Borrower hereby specifically consents to. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Trustee and Lender and their attorneys and agents; and all such expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Upon every such entering upon or taking of possession, Lender or Trustee may hold, store, use, operate, manage and control the Property and conduct the business

thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) keep the Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Trustee and Lender, all as Trustee or Lender from time to time may determine to be in Lender's best interest. Lender or Trustee may collect and receive all the rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (cc) the cost of insurance; (dd) such taxes, assessments and other similar charges as Lender or Trustee may in its or his option pay; (ee) other proper charges upon the Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender or Trustee, Lender or Trustee shall apply the remainder of the moneys and proceeds so received in the manner it or he shall determine in its or his sole discretion.

(d) Nothing herein shall obligate Lender or Trustee to take possession or operate any of the Property at any time, nor obligate either of them to perform any particular act (whether or not described above) in the event Lender or Trustee should take possession of and/or operate any of the Property, it being agreed by all parties that neither Lender nor Trustee shall be liable to Borrower or any other party for any action or inaction of Borrower or Lender (or their agents) relating to the possession and/or operation of the Property, except for affirmative acts constituting willful misconduct or gross negligence.

## ARTICLE 5

### ADDITIONAL RIGHTS AND REMEDIES OF LENDER

5.1 Appointment of Receiver. Should there occur any Event of Default hereunder, then and in that event Lender shall be at liberty immediately to apply for and shall be entitled as a matter of right, without regard to the value of the Property or to the solvency or insolvency of Borrower, to the appointment of a receiver to collect the rents and profits of the Property and with the power to sell the Property under order of Court and apply the net proceeds of the sale toward the payment of the debt secured by this Deed of Trust.

5.2 Assignment by Lender. The title, interest, rights and powers granted herein by Borrower to Lender, particularly the power of sale granted herein, shall inure to the benefit of anyone to whom Lender shall assign the indebtedness herein secured, and/or convey the property herein described, as well as to the successors and legal representatives of Lender.

ARTICLE 6

[RESERVED]

ARTICLE 7

MISCELLANEOUS

7.1 Cumulative Remedies. No remedy of Lender hereunder is intended to be exclusive of any remedy hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Trustee or Lender to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every power or remedy given by this Deed of Trust to Trustee or Lender may be exercised from time to time as often as may be deemed expedient by Trustee or Lender.

7.2 Notice. Except for any notice required under applicable law to be given in another manner, all notices hereunder or under applicable law shall be in writing and shall be deemed to have been sufficiently given or served for all purposes upon the earlier of (i) actual delivery or (ii) twenty-four (24) hours after deposit in registered, certified or first-class United States mail, postage prepaid, or with an overnight courier that provides delivery receipts and addressed to the parties as follows (or at such other address elected by notice pursuant to this Paragraph by the party to receive such notice):

If to Borrower: GRNOBL WESTERN ACRES, LLC  
c/o Grnobl Manager, LLC  
181 S 750 W  
North Salt Lake, Utah 84054  
Attention: A.J. Green

with copy to: RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
Salt Lake City, Utah 84111  
Attention: Jeff Rasmussen  
Email: jrasmussen@rqn.com

If to Lender: LOT LOAN LENDER I LLC  
c/o Setanta Development Capital, LLC  
4530 Park Road Suite 230  
Charlotte, NC 28209  
Attention: John F. Curry  
Email: [john@SetantaDC.com](mailto:john@SetantaDC.com)

with copy to: Katten Muchin Rosenman LLP  
550 S Tryon St Suite 2900  
Charlotte, NC 28202-4213

Attention: J. Hayden Harrell  
Email: hayden.harrell@katten.com

7.3 Successors and Assigns Bound; Joint and Several Liability; Captions; Definitions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and permitted assigns of Lender and Borrower. The captions and pleadings of the articles, sections and paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, successors or assigns.

7.4 Governing Law. This Deed of Trust shall be governed by and construed according to the laws of the State of Utah.

7.5 Entire Agreement; Amendments. This Deed of Trust, the Note and the other Loan Documents contain the entire agreement among the parties relating to the subject matter hereof and thereof, and all prior agreements relative thereto which are not contained herein or therein are terminated. This Deed of Trust, the Note and the other Loan Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted; provided, however, that Borrower shall agree to such modifications hereof and of the other Loan Documents as will facilitate any assignment by Lender of participation interests in the Loan as long as such modifications do not materially add to the obligations of Borrower or materially affect the rights of Borrower. Any alleged amendment, revision, waiver, discharge, release or termination which is not in compliance with the aforementioned provisions shall not be effective as to any party.

7.6 Subrogation. If any or all of the proceeds of the indebtedness secured hereby are used to extinguish, extend or renew any other indebtedness against the Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind, such proceeds shall be deemed to have been advanced by Lender at Borrower's request and, to the extent of such funds so used, this Deed of Trust and the indebtedness secured hereby shall be subrogated to and extend to all the rights, claims, liens, titles and interest heretofore existing against the Property or other property to secure the indebtedness or obligations so extinguished, paid, extended or renewed, and the former rights, claims, liens, title and interest, if any, shall not be waived but rather shall be continued in full force and effect in favor of Lender and shall be merged with the lien of security for the repayment of the indebtedness secured hereby.

7.7 Business or Commercial Purpose. Borrower warrants that the extension of credit evidenced by the Note secured hereby is solely for business or commercial purposes, other than agricultural purposes.

7.8 Severability. Invalidation of any one or more of the provisions of this Deed of Trust, the Note or any other Loan Document described in the Loan Agreement shall in no way affect any of the other provisions hereof or of the Note or other Loan Document which shall remain in full force and effect.

7.9 Priority. No release of any part of the Property herein described or extension of all or any part of the indebtedness hereby secured shall affect the priority of this instrument.

7.10 Trustee Provisions.

The trust created hereby is irrevocable by Borrower. Trustee, upon presentation to it of an affidavit signed by or on behalf of Lender, setting forth any facts showing a default by Borrower under any of the terms or conditions of this Deed of Trust, is authorized to accept as true and conclusive all facts and statements in such affidavit and to act hereunder in complete reliance thereon. Subject to applicable law, Trustee shall be under no obligation to notify any party hereof of any action or proceeding of any kind in which Borrower, Lender and/or Trustee shall be a party, unless brought by Trustee, or of any pending sale under any other deed of trust. The necessity of Trustee's making oath, filing inventory or giving bond as security for the execution of this Deed of Trust, as may now be or hereafter required by the laws of the State of Utah, is hereby expressly waived.

Lender, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Lender and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, with a copy thereof being provided to the persons required by *Utah Code Annotated* Section 57-1-22 or any successor statute, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Borrower, Trustee and Lender hereunder, the book and page where this Security Instrument is recorded and the name and address of the new Trustee and all other information required by *Utah Code Annotated* Section 57-1-22 or any successor statute. In compliance with *Utah Code Annotated* Section 57-1-2.5, the Trustee shall not require the trustor reinstating or paying of the loan or a beneficiary acquiring property through foreclosure to pay any costs that exceed the actual costs incurred by the Trustee.

7.11 Complete Release. If Borrower shall pay the Note in accordance with its terms, together with interest thereon, and any renewals and extensions thereof, and shall comply with all of the terms and conditions of the Loan Agreement and shall comply with all the covenants, terms and conditions of this Deed of Trust and the other Loan Documents, then this conveyance shall be null and void and shall be cancelled of record at the request and expense of Borrower.

**[Signature Page to Follow]**

IN WITNESS WHEREOF, Borrower has caused this instrument to be duly executed and sealed the day and year first above written.

**BORROWER:**

**GRNOBL WESTERN ACRES, LLC**, a Utah limited liability company

By: Grnobl Manager, LLC, a Utah limited liability company, its Manager

By: *[Signature]*  
Name: A.J. Green  
Its: Manager

STATE OF UTAH

COUNTY OF Davis

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: A.J. Green.

Today's Date: March 30, 2022

*[Signature]*  
[Notary's signature as name appears on seal]



Kristen Beattie  
[Notary's printed name as name appears on seal]

My commission expires: 07/03/2023

[Affix Notary Seal in Space Above]



**EXHIBIT A****Legal Description of Real Property**

A TRACT OF LAND BEING SITUATE IN THE NORTHWEST QUARTER OF SECTION 15, AND THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 00°01'31" WEST ALONG THE SECTION LINE A DISTANCE OF 30.00 FEET TO THE SOUTH LINE OF OVERPASS POINT SUBDIVISION, BEING ON FILE WITH THE OFFICE OF THE TOOELE COUNTY RECORDER: AND ALONG THE BOUNDARY OF SAID SUBDIVISION THE FOLLOWING TWO (2) COURSES: (1) NORTH 89°53'10" EAST 350.73 FEET; (2) NORTH 00°00'05" EAST 1385.99 FEET; FROM THE WEST QUARTER OF SAID SECTION 15 AND RUNNING THENCE CONTINUING ALONG THE BOUNDARY OF SAID SUBDIVISION THE FOLLOWING TWO (2) COURSES: (1) NORTH 00°00'05" EAST 361.82 FEET; (2) NORTH 65°42'44" WEST 457.89 FEET; THENCE NORTH 43°58'38" EAST 927.05 FEET TO THE NORTH LINE OF SAID SECTION 15; THENCE NORTH 89°44'13" EAST ALONG SAID SECTION LINE A DISTANCE OF 570.50 FEET TO THE WEST RIGHT-OF-WAY LINE OF COPPER CANYON DRIVE; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES: (1) SOUTH 775.73 FEET TO THE POINT OF A TANGENT 462.00 FOOT RADIUS CURVE TO THE RIGHT; (2) ALONG SAID CURVE A DISTANCE OF 306.35 FEET THROUGH A CENTRAL ANGLE OF 37°59'34" (CHORD BEARS SOUTH 18°59'47" WEST 300.77); (3) SOUTH 37°59'34" WEST 263.92 FEET; THENCE NORTH 52°00'26" WEST 8.00 FEET; THENCE NORTHWESTERLY 46.34 FEET ALONG THE ARC OF A 29.50 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (CHORD BEARS NORTH 07°00'26" WEST 41.72 FEET); THENCE NORTH 52°00'26" WEST 28.50 FEET; THENCE SOUTHWESTERLY 53.41 FEET ALONG THE ARC OF A 34.00 FOOT RADIUS TANGENT CURVE TO THE LEFT (CHORD BEARS SOUTH 82°59'34" WEST 48.08 FEET); THENCE SOUTH 37°59'34" WEST 102.23 FEET; THENCE NORTH 52°00'35" WEST 125.52 FEET; THENCE NORTH 02°37'24" EAST 62.60 FEET; THENCE NORTH 87°17'11" WEST 79.23 FEET; THENCE SOUTH 02°09'54" WEST 80.91 FEET; THENCE NORTH 87°50'06" WEST 213.88 FEET TO THE POINT OF BEGINNING.

Tax Id No.: 02-123-0-0043

**EXHIBIT B**

**Permitted Encumbrances**

**Matters set forth as exceptions to the policy of title insurance relating to the Property issued by Cottonwood Title Insurance Company in connection with the Note.**