

WHEN RECORDED, RETURN TO:

TBG Capital LLC
1504 First Avenue North
Seattle, WA 98109

CT-161298-CAP
TIN 38-301-0002

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

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING WITH ASSIGNMENT OF LEASES AND RENTS ("**Deed of Trust**") is made as of 8-25, 2022, by JODY ROOKSTOOL and STEPHANIE ROOKSTOOL, husband and wife, as "**Trustor**", whose address is 644 South 1330 East, Mapleton, Utah 84664; to COTTONWOOD TITLE INSURANCE AGENCY, INC., as "**Trustee**", whose address is 1996 East 6400 South, Suite 120, Salt Lake City, Utah 84121; for the benefit of TBG CAPITAL LLC, a Washington limited liability company, as "**Beneficiary**", whose address is 1504 First Avenue North, Seattle, Washington 98109.

ARTICLE I

1. **Granting Clause.** As security for the Secured Obligations (hereinafter defined), Trustor hereby grants, bargains, sells and conveys to Trustee for the use and benefit of Beneficiary, its successors and assigns, in trust, with power of sale and with right of entry and possession as provided herein for the use and benefit of Beneficiary, all Trustor's estate, right, title, interest, claim and demand, now owned or hereafter acquired, in and to the following:

a. The real property in Utah County, Utah, described on Exhibit A attached hereto and incorporated herein by this reference (the "**Land**"), together with any and all improvements now or hereafter located thereon (the "**Improvements**") (hereinafter the Land and Improvements are collectively called the "**Real Property**").

b. All land lying in streets and roads adjoining the Real Property, and all access rights and easements pertaining to the Real Property.

c. All the lands, tenements, privileges, reversions, remainders, oil and gas rights, royalties, minerals and mineral rights, all development rights and credits, air rights, hereditaments and appurtenances belonging or in any way pertaining to the Real Property.

d. All (i) water and water rights (whether decreed or undecreed, tributary, nontributary or not nontributary, surface or underground, or appropriated or unappropriated); (ii) ditches and ditch rights; (iii) spring and spring rights; (iv) reservoir and reservoir rights; (v) well rights, whether adjudicated or evidenced by any well or other permit; (vi) decreed or pending plan or augmentation or water exchange plan; and (vii) shares of stock in water, ditch and canal companies and all other evidence of such rights, which are now owned or hereafter acquired by Trustor and which are appurtenant to or which have been used in connection with such tract or improvements, if any.

e. All buildings, structures, improvements, fixtures, equipment and machinery and property now or hereafter attached to or used in connection with the use, occupancy or operation of the Real Property including, but not limited to, heating and incinerating apparatus and equipment, boilers, engines, motors, generating equipment, telephone and other communication systems, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, irrigation equipment, carpeting, under padding, elevators, escalators, partitions, mantles, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants. All property mentioned in this subsection (e) shall be deemed part of the realty and not severable wholly or in part without material injury to the Real Property.

f. All rents, issues and profits of the Real Property, all existing and future leases of the Real Property (including renewals, amendments, modifications, replacements, extensions and subleases), all agreements for use and occupancy of the Real Property (all such leases and agreements whether written or oral, are hereafter referred to as the "**Leases**"), and all guaranties of lessees' performance under the Leases, together with the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Real Property including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Property, all proceeds payable as a result of exercise of an option to purchase the Real Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, all security deposits or other deposits for the performance of any lessee's obligations under the Leases, and all proceeds from any rights and claims of any kind which Trustor may have against any lessee under the Leases or any occupants of the Real Property (all of the above are hereafter collectively referred to as the "**Rents**"). This subsection (f) is subject to the right, power and authority given to the Beneficiary in the Loan Documents (as defined herein) to collect and apply the Rents.

g. All other and greater rights and interests of every nature in such Real Property and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor.

h. All furniture, furnishings, appliances, machinery, vehicles, equipment and all other property of any kind now or hereafter located on the Real Property, used or intended to be used on the Real Property wherever actually located, or purchased with the proceeds of the Note (as defined herein), and all rights of Trustor as lessee of any property described in Section 1.f above.

i. All compensation, awards, damages, rights of action and proceeds (including insurance proceeds and any interest on any of the foregoing) arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding (including change of grade), fire, earthquake or other casualty, injury or decrease in the value of the Property.

j. All returned premiums or other payments on any insurance policies pertaining to the Property and any refunds or rebates of taxes or assessments on the Property.

k. All rights to the payment of money, accounts receivable, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all utility deposits), architectural and engineering plans, specifications and drawings, contract rights, governmental permits and licenses, and agreements and purchase orders which pertain to or are incidental to the design or construction of any improvements on the Real Property, Trustor's rights under any payment, performance, or other bond in connection with construction of improvements on the Real Property, and all construction materials, supplies, and equipment delivered to the Real Property or intended to be used in connection with the construction of improvements on the Real Property wherever actually located.

l. All contracts and agreements pertaining to or affecting the Property including, but not limited to, management, operating and franchise agreements, licenses, trade names and trademarks.

m. All of Trustor's interest in and to the proceeds of the Loan (defined below) evidenced by the Note (defined below), whether disbursed or not, any account into which Loan proceeds are deposited, and Trustor's own funds now or later held on deposit as equity funds or for payment of bills relating to the Property.

n. All loan commitments or other agreements, now or hereafter in existence, which will provide Trustor with proceeds to satisfy the Secured Obligations (defined below) and the right to receive the proceeds due under such commitments or agreements including refundable deposits and fees.

o. All books and records pertaining to any and all of the Property and the other collateral described above, including computer readable memory and any computer hardware or software necessary to access and process such memory.

p. All additions, accessions, replacements, substitutions, proceeds and products of the Property described in this Section 1 and of any of the Property which is personal property.

(All of the foregoing are collectively called the "Property".)

2. **Security Agreement.** If any of the Property is determined to be personal property, Trustor, as Debtor, hereby grants to Beneficiary, as Secured Party, a security interest in all such personal property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement between Trustor and Beneficiary pursuant to the Uniform Commercial Code as adopted in the State of Utah, as now or hereafter amended (the "**Uniform Commercial Code**"), with respect to the any collateral, and any and all property affecting or related to the use and enjoyment of the Property, now or hereafter described in any Uniform Commercial Code Financing Statement naming Trustor as Debtor and Beneficiary as Secured Party. The remedies of Beneficiary for any violation of the covenants, terms and conditions of this Deed of Trust or any other Loan Document (defined below) shall include all remedies available to secured parties under the Uniform Commercial Code.

3. **Financing Statement.** This Deed of Trust shall also constitute a financing statement filed for record in the real estate records as a fixture filing pursuant to the Uniform Commercial Code. This Deed of Trust may be given to secure an obligation incurred for the construction of improvements on the Real Property, including the acquisition of the Real Property, or to secure an obligation incurred to refinance an obligation incurred for the construction of improvements on the Real Property.

4. **Obligations Secured.** The following obligations ("**Secured Obligations**") are secured by this Deed of Trust:

a. Payment of the principal sum of Two Million One Hundred Thousand and 00/100 Dollars (\$2,100,000.00), or so much thereof as may be advanced, with interest thereon according to the terms of a Promissory Note of even date herewith, payable to Beneficiary, as Lender, or order and made by Trustor, as Borrower, including all additional advances, renewals, amendments, modifications, replacements or extensions thereof therefore (the "**Note**").

b. Payment of any further sums now or hereafter advanced or loaned by Beneficiary to Trustor, or any of its successors or assigns, and payment of every other present and future obligation owing by Trustor to Beneficiary of any kind, and all modifications thereof, including any interest, fees, costs, service charges, indemnifications and expenses connected with such obligations, regardless of whether such sums exceed the amount stated above in subparagraph (a), if (i) the promissory note or other written document evidencing the future advance or loan or other obligation specifically states that it is secured by this Deed of Trust, or (ii) the advance, including costs and expenses incurred by Beneficiary, is made pursuant to the Note, this Deed of Trust or any other documents executed by Trustor evidencing, securing, or relating to the loan evidenced by the Note (the "**Loan**"), including any construction or other loan agreement, whether executed prior to, contemporaneously with, or subsequent to this Deed of Trust (this Deed of Trust, the Note, the Revolving Line of Credit Agreement and all such other documents, (but excluding the obligations under any Environmental Indemnity Agreement, and under any personal guaranty of Guarantor (as defined in the Note) or any other guarantor) and all renewals, amendments, modifications, replacements or extensions thereof, are hereafter collectively referred to as the "**Loan Documents**"), at the rate or rates set forth in the Note, unless otherwise specified in the Loan Documents or agreed in writing.

c. Performance of each agreement, term and condition set forth or incorporated by reference in the Loan Documents.

d. Notwithstanding any of the foregoing, the Secured Obligations shall not include the obligations of Trustor under any Environmental Indemnity Agreement contemporaneously or hereafter executed by Trustor (or any other person or entity) in connection with the Loan.

e. Notwithstanding any of the foregoing, the Secured Obligations shall not include the obligations of any guarantor of the Secured Obligations under any Guaranty, regardless of the date of execution of such agreement.

ARTICLE II

1. **Assignment of Rents and Leases.** As further security for the Secured Obligations, including, without limitation with respect to all rights granted to Beneficiary herein, Trustor hereby absolutely and irrevocably assigns to Beneficiary all Trustor's interest in the Rents and Leases. Except as provided herein, Trustor warrants it has made no prior assignment of the Rents or the Leases and will make no subsequent assignment (other than to Beneficiary) without the prior written consent of Beneficiary. At Beneficiary's request, Trustor shall execute and deliver to Beneficiary a separate assignment of rents containing such terms and conditions (not inconsistent with this Deed of Trust) as Beneficiary may reasonably require. The foregoing assignment is subject to the terms and conditions of any separate assignment of the Leases and/or Rents, whenever executed, in favor of Beneficiary and covering the Property, or any portion thereof.

a. Unless otherwise provided in any separate assignment of the Leases and/or the Rents, and so long as Trustor is not in default under this Deed of Trust or any other Loan Document, Trustor may collect the Rents as the Rents become due. Trustor shall use the Rents to pay normal operating expenses for the Property and sums due and payments required under this Deed of Trust or any other Loan Document. No Rents shall be collected for a period subsequent to the current one month rental period and first or last month's rent. Trustor's right to collect the Rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceeding.

b. If Trustor is in default under this Deed of Trust or any other Loan Document, without notice to Trustor, Beneficiary or its agents or a court appointed receiver may collect the Rents. In doing so, Beneficiary may (i) evict lessees for nonpayment of rent, (ii) terminate in any lawful manner any tenancy or occupancy, (iii) lease the Real Property in the name of the then owner on such terms as it may deem best, (iv) institute proceedings against any lessee for past due rent, and (v) do all other acts and things as Beneficiary deems necessary or desirable, including, without limitation, the right to notify lessees that all Rent under such Leases are thereafter to be paid to Beneficiary. Each lessee shall be entitled to rely upon any notice from Beneficiary and shall be protected with respect to any payment of Rent made pursuant to such notice. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to Beneficiary, a receiver or an agent, operating expenses for the Real Property and any sums due or payments required under this Deed of Trust or any other Loan Document, in such order as Beneficiary may determine in its sole discretion. Any excess shall be paid to Trustor; however, Beneficiary may withhold from any

excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Beneficiary's failure to collect or discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Beneficiary of its rights to collect the Rents. The collection of the Rents by or for Beneficiary shall not cure or waive any default under this Deed of Trust or any other Loan Document. Any Rents paid to Beneficiary or a receiver shall be credited against the amount due from the lessees under the Leases. In the event any lessee under a Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute which provides for the possible termination or rejection of any Lease assigned hereby, Trustor covenants and agrees that in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Beneficiary; any check in payment of damages for rejection or termination of any such Lease will be made payable both to the Trustor and Beneficiary; and Trustor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, it will duly endorse to the order of Beneficiary any such check, the proceeds of which will be applied to any portion of the indebtedness secured hereunder in such manner as Beneficiary may elect.

c. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Real Property or any part thereof, Beneficiary is not and shall not be deemed to be: (i) "a mortgagee in possession" for any purpose; (ii) responsible for performing any of the obligations of the lessor under any Lease; (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Real Property, or any negligence in the management, upkeep, repair or control of the Real Property; or (iv) liable in any manner for the Real Property or the use, occupancy, enjoyment or operation of all or any part of it. In exercising its rights under this Section 1, Beneficiary shall be liable only for the proper application of and accounting for the Rents collected by Beneficiary or its agents.

2. **Leases.** Trustor shall fully comply with all of the terms, conditions and provisions of the Leases so that the same shall not become in default and do all things necessary to preserve the Leases in force. Unless otherwise agreed in writing by Beneficiary, without Beneficiary's prior written consent, Trustor will not enter into any Lease (i) on a form of Lease not previously approved by Beneficiary, (ii) for a term of three (3) years or more, or (iii) containing an option or right to purchase all or any part of the Property in favor of any lessee. With respect to any Lease of the whole or any part of the Real Property involving an initial term of three (3) years or more, Trustor shall not, without the prior written consent of Beneficiary: (a) permit the assignment or subletting of all or part of the lessee's rights under the Lease unless the right to assign or sublet is expressly reserved by the lessee under the Lease, (b) modify or amend the Lease for a lesser rental or term, or (c) accept surrender of the Lease or terminate the Lease except in accordance with the terms of the Lease providing for termination in the event of a default. Any proceeds or damages resulting from a lessee's default under any Lease, at Beneficiary's option, shall be paid to Beneficiary and applied against sums owed under this Deed of Trust or any other Loan Document even though such sums may not be due and payable. Except for real estate taxes and assessments, without Beneficiary's prior written consent, Trustor shall not permit any lien to be created against the Real Property which may be or may become prior to any Lease. If the Real Property is partially condemned or suffers a casualty, Trustor shall promptly repair and restore the Real Property in order to comply with the Leases.

3. **Indemnification of Beneficiary.** Nothing herein contained shall be deemed to obligate Beneficiary to perform or discharge any obligation, duty or liability of lessor under any Lease, and Trustor shall and does hereby indemnify and hold Beneficiary harmless from any and all liability, loss or damage which Beneficiary may or might incur under any Lease or by reason of the assignment, with the exception of any liability, loss or damage which results solely from the actions of Beneficiary following the time Beneficiary or its agents or a receiver applied for by Beneficiary takes possession of the Real Property; and any and all such liability, loss or damage incurred by Beneficiary, together with the costs and expenses, including reasonable attorneys' fees, incurred by Beneficiary in defense of any such claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Trustor shall reimburse Beneficiary therefor on demand.

ARTICLE III

1. **Non-Agricultural Use.** Trustor represents and warrants to Beneficiary that the Property is not used principally or primarily for agricultural or farming purposes.

2. **Performance of Obligations.** Trustor shall promptly and timely pay all sums due pursuant to the Loan Documents, strictly comply with all the terms and conditions of the Loan Documents and perform each Secured Obligation in accordance with its terms.

3. **Warranty of Title.** Trustor warrants that it has good and marketable title to an indefeasible fee simple estate in the Real Property, and good marketable title to the personal property, subject to no liens, encumbrances, easements, property assessments, security interests, claims or defects of any kind prior or subordinate to the lien of this Deed of Trust, except for those listed in Beneficiary's ALTA Extended Coverage Loan Policy insuring Beneficiary's interest in this Deed of Trust, or approved by Beneficiary in writing (the "**Exceptions**"), and nondelinquent real estate taxes and assessments for the current year. Trustor warrants the Exceptions and the real estate taxes and assessments are not delinquent or in default, and Trustor has the right to convey the Real Property to Trustee for the benefit of Beneficiary, and the right to grant a security interest in the personal property. Trustor will warrant and defend title to the Property and will defend the validity and priority of the lien of this Deed of Trust and the security interests granted herein against any claims or demands.

4. **Waiver of Homestead Exemption.** Trustor hereby waives all rights to any homestead exemption to which Trustor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.

5. **Prohibited Liens.**

a. Subject to Trustor's rights under subsection (b) below, Trustor shall not permit any governmental or statutory liens (including taxes, mechanic's or materialmen's liens) to be filed against the Property, except real estate taxes and assessments not yet due and liens permitted by the Loan Documents or approved by Beneficiary in writing.

b. Trustor shall have the right to contest in good faith by appropriate legal or administrative proceeding the validity of any prohibited lien, encumbrance or charge so long as:

i. such proceedings shall operate to prevent the collection of the encumbrance, lien, or charge;

ii. neither the Property nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost; and

iii. Trustor, before the date such encumbrance, lien, or charge becomes delinquent, gives such reasonable security as may be requested by Beneficiary to insure payment of such encumbrance, lien, or charge and prevent any forfeiture or loss of the Property or any part thereof.

6. **Payment of Taxes and Other Encumbrances.** Trustor shall pay all real estate taxes and any assessments or ground rents, if any, at least seven (7) days prior to delinquency unless otherwise provided for in the reserve account described in Section 17 below. All other encumbrances, charges and liens affecting the Property, including mortgages and deeds of trust, whether prior to or subordinate to the lien of this Deed of Trust, shall be paid when due and shall not be in default. On request, Trustor shall furnish evidence of payment of these items.

7. **Maintenance-No Waste.** Trustor shall protect and preserve the Property and maintain it in good condition and repair. Trustor shall do all acts and take all precautions, which from the character and use of the Property are reasonable, proper, or necessary to so maintain, protect and preserve the Property. Trustor shall not commit or permit any waste of the Property.

8. **Alterations, Removal and Demolition.** Unless otherwise agreed in writing by Beneficiary, Trustor shall not structurally alter, remove or demolish any building or improvement on the Real Property without Beneficiary's prior written consent. Trustor shall not remove any fixture or other item of property which is part of the Property without Beneficiary's prior written consent unless the fixture or item of property is replaced by an article of equal suitability, owned by Trustor free and clear of any lien or security interest.

9. **Completion, Repair and Restoration.** Trustor shall promptly complete or repair and restore in good workmanlike manner any building or improvement on the Real Property which may be constructed or damaged or destroyed and shall pay all costs incurred therefor. Prior to commencement of any construction requiring a building permit, Trustor shall submit the plans and specifications for Beneficiary's approval and furnish evidence of sufficient funds to complete the work.

10. **Compliance With Laws.** Trustor shall comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property, including, without limitation, all applicable requirements of the Fair Housing Act of 1968 (as amended) and the Americans With Disabilities Act of 1990 (as the same may be amended from time to time), and shall not commit or permit any act upon or concerning the Property in violation of any such laws, ordinances, regulations, covenants, conditions, and restrictions. Trustor shall defend, indemnify and hold Beneficiary harmless from and against all liability threatened against or suffered by Beneficiary by reason of a breach by Trustor of the foregoing representations, warranties, covenants and agreements. The foregoing indemnity shall include the cost of all alterations to the Property (including architectural, engineering,

legal and accounting costs), all fines, fees and penalties, and all legal and other expenses (including attorneys' fees) incurred in connection with the Real Property being in violation of any such laws, ordinances, regulations, covenants, conditions and restrictions. If Beneficiary or its designee shall become the owner of or acquire an interest in or rights to the Property by foreclosure or deed in lieu of foreclosure of this Deed of Trust or by other means, the foregoing indemnification obligation shall survive such foreclosure or deed in lieu of foreclosure or other acquisition of the Property. Notwithstanding the preceding sentence, Trustor shall have no obligation to defend, indemnify or hold Beneficiary harmless from any liability arising from or out of the activities of Beneficiary or its agents with respect to the Property on or after the transfer of the Property to Beneficiary pursuant to foreclosure proceedings or in lieu thereof.

11. **Impairment of Collateral.** Trustor shall not, without Beneficiary's prior written consent, change the general nature of the occupancy of the Real Property, initiate, acquire or permit (within its control) any change in any public or private restrictions (including without limitation a zoning reclassification) limiting the uses which may be made of the Property, or take or permit (within its control) any action which would impair the Property or Beneficiary's lien or security interest in the Property.

12. **Inspection of Collateral.** Beneficiary and/or its representative may inspect the Property at reasonable times after reasonable notice.

13. **Trustor's Defense of Collateral.** Trustor shall appear in and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee under this Deed of Trust.

14. **Beneficiary's Right to Protect Collateral.** Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Property or the rights or powers of Beneficiary or Trustee under this Deed of Trust. Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien not listed as an Exception which in its judgment appears to be prior or superior to the lien of this Deed of Trust. If Trustor fails to make any payment or do any act required under this Deed of Trust or any other Loan Document, Beneficiary, without any obligation to do so and without releasing Trustor from any obligations under this Deed of Trust or any other Loan Document, may make the payment or cause the act to be performed in such manner and to such extent as Beneficiary may deem necessary to protect the Property. Beneficiary is authorized to enter upon the Real Property for such purposes. In exercising any of these powers Beneficiary may incur such expenses, in its absolute discretion, it deems necessary.

15. **Environmental Matters.** Trustor is responsible for all obligations of compliance with any and all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning public health, safety or the environment, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions or concerns as may now or at any time hereafter be in effect. Trustor covenants and agrees to comply with all obligations imposed by applicable law, rules, regulations or requirements of any governmental authority regarding the generation, storage and disposal of hazardous substances at the Real Property. Trustor further agrees to promptly notify Beneficiary of any violation as to any

environmental matter and any spills or accidents involving a hazardous substance, and to permit reasonable entry onto the Real Property by Beneficiary for verification of Trustor's compliance with this covenant. This Section 15 shall survive the termination or expiration of this Deed of Trust and the repayment of the Loan.

16. **Prohibited Activities.** Trustor shall not use, occupy, or permit the use or occupancy of any portion of the Real Property by Trustor or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation any law relating to the use, sale, possession, cultivation, manufacture, distribution or marketing of any controlled substances or other contraband (whether for commercial, medical, or personal purposes), or any law relating to the use or distribution of marijuana (collectively, "**Prohibited Activities**"). If Trustor becomes aware that any lessee is likely engaged in any Prohibited Activities, Trustor shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities. Failure by Trustor to comply with this Section shall constitute a material non-curable default. In addition and not by way of limitation, Trustor shall indemnify, defend and hold Beneficiary, and its successors and assigns, harmless from and against any and all loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities by Trustor or any lessee, tenant, licensee, permittee, agent, or any other person. This indemnity includes, without limitation any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture.

17. **Reserve Account.**

a. Subject to subsection (d) below, if Beneficiary so requires, Trustor shall pay to Beneficiary monthly, together with and in addition to any payments due under the Note, a sum, as estimated by Beneficiary, equal to the ground rents, if any, the real estate taxes and assessments next due on the Real Property and the premiums next due on insurance policies required under this Deed of Trust or any other Loan Document, less all sums already paid therefore, divided by the number of months to elapse before two (2) months prior to the date when the ground rents, if any, real estate taxes, assessments and insurance premiums will become delinquent. The monthly reserve accounts payments and any other payments due under the Note shall be paid in a single payment and applied by Beneficiary, at its option, and in the following order if Beneficiary does not elect a different order: (1) ground rents, if any, real estate taxes, assessments and insurance premiums, (2) expenditures made pursuant to the Loan Documents and interest thereon, (3) interest on the Note, and (4) principal due on the Note. Trustor shall promptly deliver to Beneficiary all bills and notices pertaining to the ground rents, if any, taxes, assessments and insurance premiums.

b. The reserve account is solely for the protection of Beneficiary. Beneficiary shall have no responsibility except to credit properly the sums actually received by it. No interest will be paid on the funds in the reserve account and Beneficiary shall have no obligation to deposit the funds in an interest-bearing account. Upon assignment of this Deed of Trust by Beneficiary, any funds in the reserve account shall be turned over to the assignee and any responsibility of Beneficiary with

respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the grantee all rights of Trustor to any funds in the reserve account.

c. If the total of the payments to the reserve account exceeds the amount of payments actually made by Beneficiary, plus such amounts as have been reasonably accumulated in the reserve account toward payments to become due, such excess may, at Beneficiary's election, be (1) credited by Beneficiary against sums then due and payable under this Deed of Trust or any other Loan Document, or (2) refunded to Trustor as its name appears on the records of Beneficiary. If, however, the reserve account does not have sufficient funds to make the payments when they become due, Trustor shall pay to Beneficiary the amount necessary to make up the deficiency within fifteen (15) days after written notice to Trustor. If this Deed of Trust is foreclosed or if Beneficiary otherwise acquires the Property, the Beneficiary shall, at the time of commencement of the proceedings or at the time the Property is otherwise acquired, apply the remaining funds in the reserve account, less such sums as will become due during the pendency of the proceedings, against the sums due under this Deed of Trust or any other Loan Document and/or to make payments required under this Deed of Trust or any other Loan Document.

d. Trustor shall not be required to pay monthly reserve account payments so long as there has been no more than four (4) late payments due under the Note throughout the term of the Loan and there is no other default under this Deed of Trust or any other Loan Document and so long as Trustor remains in ownership of the Property, provided receipted bills evidencing the payment of all taxes and/or assessments and insurance premiums are exhibited to Beneficiary within fifteen (15) days after Beneficiary's request therefore. Upon any change in any of these conditions, Beneficiary may, at its option then or thereafter exercised, require the payment of reserves pursuant to this Section 17.

18. **Repayment of Beneficiary's Expenditures.** Trustor shall pay within ten (10) days after written notice from Beneficiary all sums expended by Beneficiary and all costs and expenses incurred by Beneficiary in taking any actions pursuant to the Loan Documents including attorneys' fees, accountants' fees, appraisal and inspection fees, and the costs for title reports. If any laws or regulations are passed subsequent to the date of this Deed of Trust which require Beneficiary to incur out-of-pocket expenses in order to maintain, modify, extend or foreclose this Deed of Trust, revise the terms of the Loan or consent to an Accelerating Transfer (as defined below), Trustor shall reimburse Beneficiary for such expenses within ten (10) days after written notice from Beneficiary. Expenditures by Beneficiary shall bear interest from the date of such advance or expenditure at the Past Due Rate defined in the Note, shall constitute advances made under this Deed of Trust and shall be secured by and have the same priority as the lien of this Deed of Trust. If Trustor fails to pay any such expenditures, costs and expenses and interest thereon, Beneficiary may, at its option, without foreclosing the lien of this Deed of Trust, commence an independent action against Trustor for the recovery of the expenditures and/or advance any undisbursed Loan proceeds to pay the expenditures.

19. **Accelerating Transfers.**

a. "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, transfer of full possessory rights, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law or otherwise, and

whether or not for record or for consideration. If Trustor is a corporation, "Accelerating Transfer" also means any transfer or transfers of shares possessing, in the aggregate, fifty percent (50%) or more of the voting power. If Trustor is a partnership, "Accelerating Transfer" also means withdrawal or removal of any general partner, dissolution of the partnership under Utah law, or any transfer or any transfers of, in the aggregate, fifty percent (50%) or more of the partnership interests. If Trustor is a limited liability company or other form of limited liability entity, "Accelerating Transfer" also means any transfer or transfers of membership or management units, shares or other forms of interest in such entity, possessing, in the aggregate, fifty percent (50%) or more of the voting power. If Trustor is the majority owner of a business, either through ownership of shares of a corporation or interest in a partnership, limited liability company or other entity, which occupies seventy-five percent (75%) or more of the improvements on the Real Property, "Accelerating Transfer" also means any sale, contract to sell, or other transfer of the business or substantial assets of the business, other than in the ordinary course, or the failure of the business to continue to occupy the Real Property.

b. Trustor acknowledges Beneficiary is taking actions in reliance on the expertise, skill, experience and reliability of Trustor, and the obligations secured hereby include material elements similar in nature to a personal service contract or ownership interest. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer without Beneficiary's prior written consent, which Beneficiary may withhold in its sole discretion. If Beneficiary consents, it may charge the Trustor a fee as consideration for such consent and condition its consent on such changes to the terms and conditions of the Note and other Loan Documents as Beneficiary may require, including without limitation increasing the interest rate on the Note. Trustor shall pay Beneficiary's actual costs incurred in making its decision to consent to an Accelerating Transfer, including but not limited to the cost of credit reports, an updated appraisal of the Real Property, an updated environmental assessment and documentation. If any Accelerating Transfer occurs without Beneficiary's prior written consent, Beneficiary in its sole discretion may declare an immediate default and all sums secured by this Deed of Trust to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided herein. This provision shall apply to each and every Accelerating Transfer regardless of whether or not Beneficiary has consented or waived its rights, whether by action or non-action, in connection with any previous Accelerating Transfer(s).

c. If all or any part of this Section 19 relevant to a particular Accelerating Transfer is unenforceable according to the law in effect at the time of the Accelerating Transfer, then Trustor shall reimburse Beneficiary for its actual costs incurred in processing the Accelerating Transfer on its records, including but not limited to the cost of modifications of Loan Documents, an appraisal, and obtaining relevant credit and financial information.

20. **Release of Parties or Collateral.** Without affecting the obligations of any party under this Deed of Trust or any other Loan Document, and without affecting the lien of this Deed of Trust and Beneficiary's security interest in the Property, Beneficiary and/or Trustee may, without notice (a) release all or any Trustor and/or any other party now or hereafter liable for any of the Secured Obligations (including guarantors), (b) release all or any part of the Property, (c) subordinate the lien of this Deed of Trust or Beneficiary's security interest in the Property, (d) take and/or release any other security for or guarantees of the Secured Obligations, (e) grant an extension of time for performance

of the Secured Obligations, (f) modify, waive, forbear, delay or fail to enforce any of the Secured Obligations, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the Property, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Real Property, and (j) join in the grant of any easement on the Real Property. Any subordinate lienholder shall be subject to all such releases, extensions or modifications without notice to or consent from the subordinate lienholder. Trustor shall pay any Trustee's, attorneys', title insurance, recording, inspection or other fees or expenses incurred in connection with release of Property, the making of a map, plat or the grant of an easement.

ARTICLE IV

1. **Required Insurance Coverage.** Trustor shall at all times be in compliance with the following requirements:

(a) **Property Insurance.** Unless the Property is vacant or the improvements have no material value, Trustor, at its sole cost and expense, shall keep the Property insured against loss or damage by fire and against loss or damage by other risks now embraced by "Special Form" or "All Risk" coverage, so called (including without limitation, riot and civil commotion, vandalism, malicious mischief, water, fire, burglary and theft) without any exclusion for losses due to terrorism, windstorm (including named storm), hail, boiler and machinery/equipment breakdown (if applicable), flood and/or earthquake (if applicable), all as may be required by Beneficiary, in amounts at all times sufficient to prevent Beneficiary from becoming a co-insurer within the terms of the applicable policies and under applicable insurance law, providing for deductibles (not to exceed \$10,000.00), maintained in an amount not less than 100% of the full replacement cost of the Property (equivalent to the insurable value of the Property as determined by an appraisal acceptable to Beneficiary), on an agreed amount basis, without deduction for depreciation and without reference to co-insurance (an insurance to value provision is not permitted in the policy).

(b) **Liability and Other Insurance.** Trustor shall also provide commercial general liability insurance naming Beneficiary as an additional insured. Such insurance shall provide coverage for personal injury liability, and liability for bodily injury, death, and damage to property, products and completed operations, against any and all claims, including all legal liability to the extent insurable and imposed upon Beneficiary, and all court costs, legal fees and expenses. The limits of liability for such insurance coverage shall be in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate, and shall be without a deductible or self-insured retention together with excess/umbrella liability coverage of not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence. Upon request, Trustor shall also carry additional insurance or additional amounts of insurance covering Trustor or the Property as Beneficiary shall reasonably require. If the Property is vacant, Trustor shall provide a standalone vacant land or vacant building policy, consistent with the foregoing limits. A Property is vacant if no authorized person undertakes any activities on the Property, resides or works on the Property, and no other action has been taken with respect to the Property. See subsection 1(b) for required insurance once construction activities commence.

(c) **Builder's Risk Insurance.** If Trustor is undertaking construction activities on the Property at all times during which time such structural construction, material repairs or alterations are being made with respect to the Property, Trustor shall also maintain (A) owner's contingent or protective liability insurance covering claims related to construction and not covered by or under the terms or provisions of the above-mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection 1(a) in a so-called builder's risk completed value form on a non-reporting basis, including permission to occupy the Property, an agreed amount endorsement waiving co-insurance provisions, a soft cost endorsement in an amount required by Beneficiary, coverage for materials in transit or storage, and delay in completion coverage in an amount required by Beneficiary.

(d) **Workers' Compensation Insurance.** If Trustor has employees, Trustor shall also maintain workers' compensation insurance, subject to the laws of the state where the Property is located, and employer's liability insurance with a limit of at least \$1,000,000.00 per accident and per disease per employee, with respect to any work or operations on or about the Property.

(e) **Contractor Insurance.** If Trustor is required to provide builder's risk insurance under subsection 1(c), above, Trustor shall cause each general contractor and each other contractor with whom Trustor contracts directly for the Property to provide and maintain comprehensive (commercial) general liability insurance, protective liability insurance and workers' compensation insurance for all employees of such contractor meeting, respectively, the requirements of subsections 1(b), (c) and (d) above. Beneficiary reserves the right to reject any exclusions from coverage. The policy or policies may not include exclusions for multifamily, condominiums, townhouses, residential structure or tract homes, if Beneficiary is contracting the same. The policy or policies may not exclude Action Over Claims or subsidence coverage. Beneficiary reserves the right to require a Contractor Jobsite Pollution policy. The policy must cover commercial Auto, Hired and Non-Owned, at limits no less than those set forth in subsection 1(b), above.

(f) **Other Insurance.** Trustor shall maintain such other, different and additional insurance coverage as Beneficiary may reasonably require from time to time.

2. **Insurance Policy Requirements.**

(a) A Certificate of Insurance, and at Beneficiary's request, the original policy or policies and renewals thereof (or, at the election of Beneficiary, duplicate originals or certified copies thereof), together with receipts evidencing payment in full, without financing, of the premium therefor, shall be deposited with Beneficiary within twenty (20) days after the closing of the Loan and with respect to any required renewals or required additional coverage, by the time required below. Trustor assigns to Beneficiary the proceeds of each such policy or policies as further security for the Secured Obligations. Insurance required hereunder may be provided in one policy or separate policies for hazard insurance, rental or business income insurance, general liability, terrorism, windstorm/hail, earthquake, environmental or flood (or other special perils) insurance. In the event Trustor elects to obtain separate policies for the Property and special perils coverage required herein, each such separate policy shall include loss of rents/business income coverage provisions or endorsements. Each such policy of insurance shall be primary, contain a non-contributing loss payable clause and a mortgagee clause in favor of and in form acceptable to Beneficiary for property policies and naming

Beneficiary as an additional insured on a primary and non-contributory basis for liability policies and shall provide for not less than forty-five (45) days prior written notice to Beneficiary of any intent to modify, cancel, rescind, or terminate the policy or policies or the expiration of such policies of insurance, and must include a Beneficiary's Loss Payable endorsement and such other endorsements as required by Beneficiary, including replacement cost, agreed amount and inflation guard endorsements. If the insurance required hereunder or any portion thereof is maintained pursuant to a blanket policy, Trustor shall furnish to Beneficiary a certified copy of such policy, together with an original Evidence of Insurance (in form satisfactory to Beneficiary) indicating that Beneficiary (and its successors and/or assigns) is an insured under such policy in regard to the Property and showing the amount of coverage apportioned to the Property which coverage shall be in an amount sufficient to satisfy the requirements hereof. Not less than forty-five (45) days prior to the expiration dates of each policy required of Trustor hereunder, Trustor will deliver to Beneficiary a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment and renewal satisfactory to Beneficiary. In the event of foreclosure of this Deed of Trust or deed in lieu of foreclosure of this Deed of Trust, any successor in title through foreclosure or deed in lieu of foreclosure shall succeed to all rights of Trustor, including, without limitation, any rights to unearned premiums, in and to all insurance policies assigned and delivered to Beneficiary hereunder.

(b) Each insurance policy required shall be issued by an insurance company authorized to do business in the state where the Property is located, approved by Beneficiary, and must have and maintain a current financial strength rating of "A VIII" (or higher) from A.M. Best or equivalent (or, if a rating by A.M. Best is no longer available, then a similar rating from a similar or successor service).

(c) Each insurance policy required, including, without limitation, contractor's insurance, shall include a waiver of subrogation provision acceptable to Beneficiary. Trustor for itself, and on behalf of its insurers, hereby waives and releases any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for any loss of or damage to Trustor, other persons, the Property, Trustor's property or the property of other persons from any cause required to be insured against by the provisions of this Agreement or otherwise insured against by Trustor.

3. Application of Insurance Proceeds.

(d) In the event of any loss, Trustor shall give prompt written notice thereof to the insurance carrier and Beneficiary. Trustor hereby authorizes Beneficiary as Trustor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Beneficiary's or Trustor's name, any action relating to any claim, and to collect and receive insurance Proceeds; provided, however, that Beneficiary shall have no obligation to do so. Within ten (10) days after Trustor's receipt of any insurance Proceeds, Trustor shall deliver the same to Beneficiary in the form in which they were received, together with any endorsements or documents that may be necessary to effectively negotiate or transfer the same to Beneficiary. Beneficiary shall apply any insurance Proceeds received by it hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and then, in its absolute discretion and without regard to the adequacy of its security, to the payment of the Loan, whether then due and payable or not. Any such application

of proceeds to principal of the Note shall be without imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof.

(e) Beneficiary will make insurance proceeds available to Trustor to reimburse Trustor, under Beneficiary's prescribed disbursement control procedures, for the cost of restoration or repair of the Property, provided the following conditions are satisfied:

(i) There is then no Default or Event of Default (as defined in the Note) under this Deed of Trust.

(ii) Trustor shall have furnished to Beneficiary and Beneficiary shall have approved a detailed budget and cost breakdown for the restoration and rebuilding work, describing the nature and type of expenses and the cost thereof estimated by Trustor for such restoration and rebuilding work, including without limitation, the cost of materials and supplies, architect's, engineer's and designer's fees, general contractor's fees, and the anticipated monthly disbursement schedule.

(iii) Beneficiary shall have reviewed and approved the construction contract for the repair and restoration, and if required by Beneficiary, Beneficiary shall have received and approved payment and performance bonds with dual obligee rider.

(iv) Beneficiary shall have received satisfactory evidence that the insurance proceeds are adequate to pay all of the direct and indirect costs of restoring the Property to its condition immediately prior to the casualty, and if the proceeds are insufficient, Beneficiary shall have received from Trustor the amount of the deficiency in immediately available funds. If at any time or from time to time during restoration of the Property, Beneficiary determines that the undisbursed insurance proceeds and any undisbursed deficiency funds deposited by Trustor with Beneficiary are insufficient to pay all of the remaining direct and indirect costs of restoration, Trustor will deposit the deficiency with Beneficiary in immediately available funds within ten (10) days after demand.

(v) Beneficiary shall have received evidence satisfactory to it that Trustor has funds sufficient to pay all operating expenses, taxes, debt service and other carrying costs of the Property through the period of repair or restoration.

(vi) Trustor shall have furnished to Beneficiary and Beneficiary shall have approved plans and specifications for the restoration or rebuilding work, and written evidence satisfactory to it that all governmental authorities having jurisdiction over the Property have approved the same.

(vii) In Beneficiary's judgment, the rebuilding and restoration work can be completed at prior to the maturity date of the Note.

(viii) Beneficiary must be satisfied that the Leases of the Property will remain in full force and effect pending the completion of the repairs, or Beneficiary shall have

received evidence satisfactory to it that upon completion of the repair or restoration work, the Property will produce sufficient income and be of sufficient value to be adequate security for the Loan.

(ix) Trustor executes and delivers to Beneficiary such additional security documents and instruments as Beneficiary deems reasonably necessary to continue and perfect Beneficiary's security interest in the Property.

(f) Beneficiary may, at its option, condition disbursements on Beneficiary's approval of the plans and specifications for the reconstruction, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and material suppliers, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Beneficiary may require in accordance with Beneficiary's customary disbursement procedures for construction loans.

(g) Trustor's obligations under the Deed of Trust to repair and restore the Property in the event of any casualty are not conditioned on the availability or adequacy of insurance proceeds to pay for such repair and restoration.

4. **Beneficiary Makes no Warranties as to Insurance.** The Trustor insurance requirements herein shall not be construed as a warranty by Beneficiary that the type and amount of coverage is sufficient to full cover the risks related to the Property, construction and Improvements. Trustor is directed to rely on its own insurance advisors as to proper insurance for the Property, construction and Improvements.

5. **Force-Placed Insurance.** If Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Agreement, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest, and Trustor will pay all premiums thereon and reimburse Beneficiary for all amounts paid or incurred by Beneficiary in connection therewith promptly upon demand by Beneficiary, and until such payment is made by Trustor, the amount of all such premiums shall be added to the Secured Obligations.

6. **Further Assurances.** Trustor agrees to execute and deliver from time to time, upon the request of Beneficiary, such further instruments or documents as may be requested by Beneficiary to confirm the grant and assignment to Beneficiary of any insurance proceeds.

7. **Damages and Condemnation Proceeds.**

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payer to pay to Beneficiary, the following claims, causes of action, awards, payments and rights to payment: (i) all awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; (ii) all other awards, claims and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and (iii) all interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if any offer is made, or any action or proceeding is commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property. If Beneficiary chooses to do so, it may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, and it may make any compromise or settlement of the action or proceeding. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property.

(c) All proceeds of these assigned claims, other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply those proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including attorneys' fees, and then to reduce the loan balance.

ARTICLE V

1. Default.

a. Trustor will be in default ("**Default**") under this Deed of Trust if (i) Trustor fails to make any payment when due under the Note, this Deed of Trust or any other Loan Document within ten (10) days of the due date, regardless of how such amount may have become due; (ii) there is a default under, a breach of, or failure to perform any other covenant, agreement or obligation to be performed under this Deed of Trust or any other Loan Document beyond any applicable notice and cure period; (iii) any representation or warranty contained in this Deed of Trust or any other Loan Document, or any financial information furnished by Trustor or its agents to Beneficiary in connection with the Loan, proves to be false or misleading in any material respect; (iv) Trustor defaults under any lease or other contract or agreement relating to the Property, and such default is not cured within the applicable cure period, if any; (v) the occurrence of a default or an event of default under any other agreement between Trustor and Beneficiary or between Beneficiary and any guarantor of the Loan; (vi) Trustor or any guarantor of the Loan fails to pay his, her or its debts generally as they become due, or files a petition or action for relief under any bankruptcy, reorganization or insolvency laws or makes an assignment for the benefit of creditor; (vii) an involuntary petition is filed against Trustor or any guarantor of the Loan under any bankruptcy, reorganization or other insolvency laws, or a custodian, receiver or trustee is appointed to take possession, custody or control of the Property or any other properties of Trustor, or the assets of any guarantor of the Loan, and such petition or appointment is not set aside, withdrawn or dismissed within thirty (30) days from the date of filing or appointment; or goods, inventory; (viii) the death, dissolution or liquidation of Trustor or any guarantor; (ix) a default (after the expiration of any applicable notice or cure periods) occurs under any other loan currently existing or hereafter made by Beneficiary, or an entity owned by any beneficial owner of Beneficiary, to Trustor, any guarantor of the Note, or any entity in which Borrower or any of the Guarantors have an interest; or (x) the death, dissolution or liquidation of Borrower or one or more Guarantors of the Note.

b. Notwithstanding any other provision of this Deed of Trust, Beneficiary shall not accelerate the maturity of one or more of the Secured Obligations (a) because of a monetary default (defined below) by Trustor unless Trustor fails to cure the default within five (5) days of the date on which Beneficiary mails or delivers written notice of the default to Trustor, or (b) because of

a nonmonetary default (defined below) by Trustor unless Trustor fails to cure the default within thirty (30) days of the date on which Beneficiary mails or delivers written notice of the default to Trustor. For purposes of this Deed of Trust, the term "monetary default" means a failure by Trustor to make any payment required of it pursuant to the Note or any other Loan Document, and the term "nonmonetary default" means a failure by Trustor or any other person or entity to perform any obligation contained in the Note or any other Loan Document, other than the obligation to make payments provided for in the Note or any other Loan Document. If a nonmonetary default is capable of being cured and the cure cannot reasonably be completed within the thirty (30) day cure period, the cure period shall be extended up to sixty (60) days so long as Trustor has commenced action to cure within the thirty (30) day cure period, and in Beneficiary's reasonable opinion, Trustor is proceeding to cure the default with due diligence. None of the foregoing shall be construed to obligate Beneficiary to forebear in any other manner from exercising its remedies and Beneficiary may pursue any other rights or remedies which Beneficiary may have because of a default.

2. **Remedies.** Immediately upon or any time after the occurrence and during the continuance of any Default hereunder, Beneficiary may exercise any remedy available at law or in equity, including but not limited to those listed below and those listed in the other Loan Documents, in such sequence or combination as Beneficiary may determine in Beneficiary's sole discretion:

a. **Performance of Defaulted Obligations.** Beneficiary may make any payment or perform any other obligation under the Loan Documents which Trustor has failed to make or perform, and Trustor hereby irrevocably appoints Beneficiary as the true and lawful attorney-in-fact for Trustor to make any such payment and perform any such obligation in the name of Trustor. All reasonable payments made and expenses (including attorneys' fees) incurred by Beneficiary in this connection, together with interest thereon at the Past Due Rate, as defined in the Note, from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Trustor to Beneficiary. In lieu of advancing Beneficiary's own funds for such purposes, Beneficiary may use any funds of Trustor which may be in Beneficiary's possession, including but not limited to insurance or condemnation proceeds and amounts deposited for taxes, insurance premiums, or other purposes.

b. **Specific Performance and Injunctive Relief.** Notwithstanding the availability of legal remedies, Beneficiary will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Trustor to cure or refrain from repeating any Default.

c. **Acceleration of Loan Documents.** Beneficiary may, without notice or demand, declare the Loan, the Note, or any other Secured Obligations or Loan Document to which Trustor is or may become primarily obligated immediately due and payable in full.

d. **Suit for Monetary Relief.** With or without accelerating the maturity of Note, Beneficiary may sue from time to time for any amount due under any of the Loan Documents.

e. **Possession of Real Property.** Beneficiary may enter and take possession of the Real Property without seeking or obtaining the appointment of a receiver, may employ a

managing agent for the Real Property, and may lease or rent all or any part of the Real Property, either in Beneficiary's name or in the name of Trustor, and may collect the rents, issues, and profits of the Real Property. Any revenues collected by Beneficiary under this section, at Beneficiary's option, shall be paid to Beneficiary and applied against sums owed under this Deed of Trust or any other Loan Document even though such sums may not be due and payable.

f. Enforcement of Security Interests. Beneficiary may exercise all rights of a secured party under the Uniform Commercial Code with respect to Trustor's personal property, including but not limited to taking possession of, holding, and selling such personal property. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Beneficiary's giving of such notice to Trustor at least ten (10) days prior to the time of any public sale or the time after which any private sale or other intended disposition is to be made.

g. Foreclosure Sale. If a Default occurs and Beneficiary so requests, then pursuant to applicable law, after the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in the notice of sale.

Further, Beneficiary reserves all rights to pursue a deficiency judgment against Trustor and/or Guarantor or any other guarantor of the Loan.

If a Default occurs hereunder, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees and costs in such amounts as shall be fixed by the court.

Beneficiary shall have the right to proceed as to the Personal Property in accordance with Beneficiary's rights and remedies in respect to real property or sell the Personal Property separately and without regard to the remainder of the Property in accordance with Beneficiary's rights and remedies provided by the Utah Uniform Commercial Code as well as other rights and remedies available at law or in equity.

h. No Waiver of Remedies. Nothing contained in this Deed of Trust or any exercise by Beneficiary of any right or remedy pursuant to this Deed of Trust or any of the other Loan Documents, shall modify or limit any obligations or liabilities the Trustor under any of the other Loan Documents. Trustor hereby agrees and acknowledges that Beneficiary may seek to enforce any rights and remedies set forth in this Deed of Trust and any other of the Loan Documents.

i. Appointment of Receiver. Upon a Default, Beneficiary, separately or in any action to foreclose this Deed of Trust, shall be entitled (without notice and without regard to the adequacy of any security for the Note, the absence of waste or deterioration of the Property or other arguments based on equity) to the appointment of a receiver of the Property, including without limitation, of the Rents, who shall have, in addition to all the rights and powers customarily

given to and exercised by such receiver, all the rights and powers granted to Beneficiary by the covenants contained herein. Once appointed, at Beneficiary's option, such receiver may remain in place until the default is cured.

j. Right to Make Repairs, Improvements. Should any part of the Real Property come into the possession of Beneficiary, after the occurrence and during the continuance of any Default, Beneficiary may (but shall not be required to) use, operate, and/or make repairs, alterations, additions and improvements to the Real Property for the purpose of preserving it or its value. Trustor covenants to promptly reimburse and pay to Beneficiary, at the place where the Note is payable, or at such other place as may be designated by Beneficiary in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Beneficiary in connection with its custody, preservation, use or operation of the Real Property, after the occurrence and during the continuance of any Default, together with interest thereon from the date incurred by Beneficiary at the Past Due Rate, as defined in the Note, and all such expenses, costs, taxes, interest, and other charges shall be a part of the Secured Obligations. It is agreed, however, that the risk of accidental loss or damage to the Real Property is undertaken by Trustor and, except for Beneficiary's willful misconduct or gross negligence, Beneficiary shall have no liability whatsoever for decline in value of the Real Property, for failure to obtain or maintain insurance, or for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

k. Surrender of Insurance. Beneficiary may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply any unearned premiums as a credit on the Secured Obligations and, in connection therewith, Trustor hereby appoints Beneficiary (or any officer of Beneficiary) as the true and lawful agent and attorney-in-fact for Trustor (with full powers of substitution), which power of attorney shall be deemed to be a power coupled with an interest and therefore irrevocable, to collect such premiums.

l. Costs in Enforcing Performance. Trustor shall pay all costs and expenses including, without limitation, costs of title searches and title policy commitments, Uniform Commercial Code searches, appraisals, environmental audits, court costs and reasonable in-house and outside attorneys' fees, incurred by Beneficiary in enforcing payment and performance of the Obligations or in exercising the rights and remedies of Beneficiary hereunder. All such costs and expenses shall be secured by this Deed of Trust and by all other lien and security documents securing the Secured Obligations. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Beneficiary.

m. Cumulative Remedies. To the fullest extent allowed by law, all Beneficiary's and Trustee's rights and remedies specified in the Loan Documents (including this Deed of Trust) are cumulative, not mutually exclusive and not in substitution for any rights or remedies available at law or in equity. Without waiving its rights in the Property, Beneficiary may proceed against Trustor or may proceed against any other security or guaranty for the Secured Obligations, in such order and manner as Beneficiary may elect. The commencement of proceedings to enforce a particular remedy

shall not preclude the discontinuance of the proceedings and the commencement of proceedings to enforce a different remedy.

ARTICLE VI

1. **Additional Security Documents.** Trustor shall within fifteen (15) days after request by Beneficiary execute and deliver any financing statement, renewal, affidavit, certificate, continuation statement, or other document Beneficiary may request in order to perfect, preserve, continue, extend, or maintain security interests or liens granted herein to Beneficiary and the priority of such security interests or liens. Trustor shall pay all costs and expenses incurred by Beneficiary in connection with the preparation, execution, recording, filing, and refilling of any such document.

2. **Reconveyance After Payment.** Upon-written request of Beneficiary stating that all obligations secured by this Deed of Trust have been paid, Trustee shall reconvey, without warranty, the Collateral then subject to the lien of this Deed of Trust. Trustor shall pay-any costs, trustee's fees and recording fees incurred in so reconveying the Property.

3. **Nonwaiver of Terms and Conditions.** Time is of the essence with respect to performance of the obligations under this Deed of Trust or any other Loan Document. Beneficiary's failure to require prompt enforcement of any such obligation shall not constitute a waiver of the obligation or any subsequent required performance of the obligation. No term or condition of this Deed of Trust or any other Loan Documents may be waived, modified or amended except by a written agreement signed by Trustor and Beneficiary. Any waiver of any term or condition shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

4. **Waivers by Trustor.** Without affecting any of Trustor's obligations under this Deed of Trust or any other Loan Document, Trustor waives the following: (a) any right to require Beneficiary to marshal its assets and remedies or to proceed against any specific party liable for sums due under this Deed of Trust or any other Loan Document or to proceed against or exhaust any specific security for sums due under this Deed of Trust or any other Loan Document; (b) notice of new or additional indebtedness of any Trustor or any other party liable for sums due under this Deed of Trust or any other Loan Document to Beneficiary; (c) any defense arising out of Beneficiary entering into additional financing or other arrangements with any Trustor or any other party liable for sums due under this Deed of Trust or any other Loan Document and any action taken by Beneficiary in connection with any such financing or other arrangements or any pending financing or other arrangements; (d) any defense arising out of the absence, impairment, or loss of any or all rights of recourse, reimbursement, contribution or subrogation or any other rights or remedies of Beneficiary against any Trustor or any other party liable for sums due under this Deed of Trust or any other Loan Document or any Property; and (e) any obligation of Beneficiary to see to the proper use and application of any proceeds advanced pursuant to this Deed of Trust or any other Loan Document.

5. **Right of Subrogation.** Beneficiary is subrogated to the rights, whether legal or equitable, of all beneficiaries, mortgagees, lienholders and owners directly or indirectly paid off or satisfied in whole or in part by any proceeds advanced by Beneficiary under this Deed of Trust or any

other Loan Document, regardless of whether such parties assigned or released of record their rights or liens upon payment.

6. **Joint and Several Liability.** If there is more than one Trustor of this Deed of Trust, their obligations shall be joint and several.

7. **Statement of Amount Owning.** Trustor, within fifteen (15) days after request by Beneficiary will furnish Beneficiary a written statement of the amount due under this Deed of Trust or any other Loan Document, any offsets or defenses against the amount claimed by Trustor, and such other factual matters as Beneficiary may reasonably request.

8. **Appraisals.** In the event of a Default, Beneficiary may obtain a current regulatory conforming appraisal of the Property. In addition, appraisals may be commissioned by Beneficiary when required by laws and regulations which govern Beneficiary's lending practices. The cost of all such appraisals (and related internal review fees and costs) will be paid by Trustor within fifteen (15) days after request by Beneficiary.

9. **Payment of New Taxes.** If any federal, state or local law is passed subsequent to the date of this Deed of Trust which requires Beneficiary to pay any tax because of this Deed of Trust or the sums due under this Deed of Trust or any other Loan Document (excluding income taxes), then Trustor shall pay to Beneficiary on demand any such taxes if it is lawful for Trustor to pay them, or, in the alternative Trustor may repay all sums due under this Deed of Trust or any other Loan Document plus any prepayment fee within thirty (30) days of such demand. If it is not lawful for Trustor to pay such taxes, then at its option Beneficiary may declare a default under this Deed of Trust or any other Loan Document.

10. **Notices.** Any notice required or desired to be given hereunder shall be in writing and shall be considered effective, if by personal delivery, when delivered, if by nationally recognized overnight carrier, when delivered if prior to 5:00 p.m. local time of the recipient on a business day, or if not, at 9:00 a.m., local time on the next business day, if mailed by certified mail, return receipt requested, postage prepaid, upon the earlier of (i) first attempted delivery by the U.S. Postal Service after mailing, or (ii) the second (2nd) business day following the date of mailing, addressed to the party at the address set forth above (or such other address as a party may specify by written notice given pursuant to this paragraph), or with respect to the Trustor, to the address at which Beneficiary customarily or last communicated with Trustor. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt.

11. **Controlling Document.** In the event of a conflict or inconsistency between the terms and conditions of this Deed of Trust and the terms and conditions of any other of the Loan Documents (except for any separate assignment of the Rents and/or the Leases and any loan agreement which shall prevail over this Deed of Trust), the terms and conditions of this Deed of Trust shall prevail.

12. **Invalidity of Terms and Conditions.** If any term or condition of this Deed of Trust is found to be invalid, the invalidity shall not affect any other term or condition of the Deed of Trust and the Deed of Trust shall be construed as if not containing the invalid term or condition.

13. **Legislation Affecting Beneficiary's Rights.** If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Deed of Trust unenforceable according to its terms, Beneficiary, at its option, may require immediate payment in full of all sums secured by this Deed of Trust and may invoke any remedies permitted herein.

14. **Rules of Construction.** This Deed of Trust shall be construed so that, whenever applicable, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, partnerships, limited partnerships, limited liability companies and other forms of entities. This Deed of Trust inures to the benefit of, and binds all parties named herein and their successors and assigns. The headings to the various sections have been inserted for convenience of reference only and shall not be used to construe this Deed of Trust.

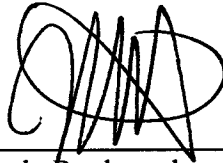
15. **Applicable Law.** This Deed of Trust and the other Loan Documents shall be governed by and construed in accordance with the internal laws of the State of Utah.

16. **Waiver of Jury Trials:** TRUSTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH TRUSTOR AND BENEFICIARY MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS DEED OF TRUST. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY TRUSTOR, AND TRUSTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. TRUSTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

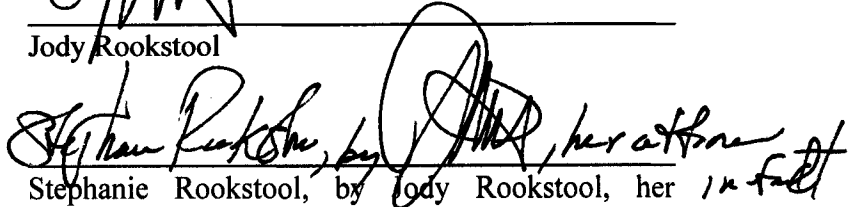
17. **Oral Agreements:** This Deed of Trust and the other Loan Documents constitute the entire agreement between Beneficiary and Trustor with respect to the subject matter of these agreements and may not be altered or amended except by written agreement signed by Beneficiary and Trustor. PURSUANT TO UTAH CODE SECTION 25-5-4, TRUSTOR IS NOTIFIED THAT THESE AGREEMENTS ARE A FINAL EXPRESSION OF THE AGREEMENTS BETWEEN BENEFICIARY AND TRUSTOR AND THESE AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.

Signed and delivered as of the date first mentioned above.

"TRUSTOR"



Jody Rookstool



Stephanie Rookstool, by Jody Rookstool, her in fact attorney-in-fact

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I certify that I know or have satisfactory evidence that JODY ROOKSTOOL is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed on August 25, 2022.



(Signature of Notary)

Latdy Dara

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Utah

My Appointment Expires: 2-27-2024



STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I certify that I know or have satisfactory evidence that JODY ROOKSTOOL is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Attorney-in-Fact of STEPHANIE ROOKSTOOL, to be the free and voluntary act and deed of said individual, for the uses and purposes mentioned in the instrument.

WITNESS my hand and official seal hereto affixed on August 25, 2022.

(Signature of Notary)

Latdy Dara

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Utah

My Appointment Expires: 2-27-2024.



EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Lot 2, PLAT "D", EAGLEROCK SUBDIVISION, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Parcel No. 38-301-0002.

Address: 644 South 1330 East, Mapleton, Utah 84664.