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AFTER RECORDING RETURN TO:

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**DEED OF TRUST, SECURITY AGREEMENT,
FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS**

**THIS DEED OF TRUST CONSTITUTES A SECURITY AGREEMENT, AND IS
FILED AS A FIXTURE FILING, WITH RESPECT TO ANY PORTION OF THE
PROPERTY IN WHICH A PERSONAL PROPERTY SECURITY INTEREST OR LIEN
MAY BE GRANTED OR CREATED PURSUANT TO THE UTAH UNIFORM
COMMERCIAL CODE OR UNDER COMMON LAW, AND AS TO ALL
REPLACEMENTS, SUBSTITUTIONS, AND ADDITIONS TO SUCH PROPERTY AND
THE PROCEEDS THEREOF. FOR PURPOSES OF THE SECURITY INTEREST OR
LIEN CREATED HEREBY, BENEFICIARY IS THE "SECURED PARTY" AND
TRUSTOR IS THE "DEBTOR." TRUSTOR IS THE OWNER OF THE PROPERTY
DESCRIBED HEREIN.**

**THIS DEED OF TRUST CONSTITUTES A "CONSTRUCTION MORTGAGE"
WITHIN THE MEANING OF UTAH CODE ANN. § 70A-9a-334(8) OR ANY
SUCCESSOR STATUTE. THE PROCEEDS OF THE LOAN SECURED BY THIS DEED
OF TRUST ARE TO BE USED BY TRUSTOR IN PART FOR THE PURPOSE OF
FUNDING THE CONSTRUCTION AND DEVELOPMENT OR REHABILITATION OF
THE REAL ESTATE AND IMPROVEMENTS DESCRIBED HEREIN AND ARE TO BE
DISBURSED IN ACCORDANCE WITH THE PROVISIONS OF THE LOAN**

Recording Requested by:
FNTG-NCS Colorado
N0028365

DOCUMENTS (AS HEREINAFTER DEFINED). TRUSTOR IS THE OWNER OF THE PROPERTY DESCRIBED HEREIN.

**DEED OF TRUST, SECURITY AGREEMENT,
FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT, FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS (this “Deed of Trust”) is given as of the 28th day of December, 2022, by FDG GAUGE SLC ASSOCIATES, LLC, a Colorado limited liability company, whose legal address is c/o Forum Real Estate Group, LLC, 240 St. Paul Street, Suite 400, Denver, Colorado 80206 (“Trustor”), as trustor, to COTTONWOOD TITLE INSURANCE AGENCY, INC., a Utah corporation, whose address is 1996 East 6400 South, Suite 120, Murray, Utah 84121 (“Trustee”), as trustee, for the use and benefit of WINTRUST BANK, NATIONAL ASSOCIATION, and its successors and assigns, as administrative agent for itself and the other Banks (as defined below), whose legal address is 231 South LaSalle Street, 2nd Floor, Chicago, Illinois 60604 (“Beneficiary”), as beneficiary.

ARTICLE I

PARTIES, PROPERTY, AND DEFINITIONS

The following terms and references shall have the meanings indicated:

1.1 Banks: All financial institutions that are, or may from time to time become, parties to the Loan Agreement (as defined below), and their successors and assigns.

1.2 Beneficiary: Wintrust Bank, National Association, and its successors and assigns, as administrative agent for itself and the other Banks. Beneficiary’s legal address is 231 South LaSalle Street, 2nd Floor, Chicago, Illinois 60604.

1.3 Chattels: All goods, fixtures, inventory, equipment, building and other materials, supplies, and other tangible personal property of every nature now owned or hereafter acquired by Trustor and used, intended for use, or reasonably required in the construction, development, or operation of the Real Property, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof.

1.4 Intangible Personality: The right of Trustor to use all trademarks and trade names and symbols or logos owned by Trustor and used in connection therewith, or any modifications or variations thereof, in connection with the operation of the improvements existing or to be constructed on the Real Property, together with all monies in the possession of Beneficiary (including, without limitation, proceeds from insurance, retainages and deposits for taxes and insurance, permits, licenses, certificates and authorizations necessary for the beneficial development, ownership, use, occupancy, operation and maintenance of the Real Property; security deposits (whether in the form of cash, letters of credit, or any other form), deposit accounts and other bank or similar accounts of Trustor (together with all amounts in any such accounts), including, without limitation, as defined in the Loan Agreement, income, revenues, contract rights and general intangibles, in each case whether now owned or hereafter acquired, and including proceeds thereof, relating in any way to, or arising in any manner from, Trustor’s ownership, use, operation, leasing, or sale of all or any part of the Property, specifically including but in no way limited to any right which Trustor may have or acquire to transfer any development rights from

the Real Property to other real property, and any development rights which may be so transferred. Without limiting the generality of the foregoing, the following rights shall be included within the term "Intangible Personality":

- (a) All of Trustor's right, title and interest in and to all agreements and contracts now or hereafter entered into by Trustor with any and all architects, contractors, subcontractors, materialmen, laborers and other persons or entities, which relate in any way to the construction of improvements on any part of the Real Property and any and all agreements and contracts entered into by Trustor;
- (b) All of Trustor's right, title and interest in and to all plans and specifications used or which may be used to design and construct improvements on any part of the Real Property; and
- (c) All of Trustor's right, title and interest under any Interest Rate Protection Agreements and all amounts received by Trustor thereunder.

Nothing herein shall be construed as imposing on Beneficiary, or as constituting an assumption by Beneficiary of, any obligation of Trustor under any of the foregoing contracts, agreements or documents.

1.5 Interest Rate Protection Agreements: Any and all agreements evidencing or securing any interest rate swap, cap, collar, forward, option or floor transaction or any other transaction to protect against fluctuations in interest rates on the Loan entered into by Trustor with any counterparty, including all transactions entered into under any ISDA Master Agreement and any Schedule and Confirmation entered into thereunder.

1.6 Loan Documents: The Construction Loan Agreement of even date herewith among Beneficiary, the Banks and Trustor (the "Loan Agreement"), the Notes, all of the deeds of trust, mortgages and other instruments and documents securing the Notes, including this Deed of Trust, and each other document executed or delivered in connection with the transaction pursuant to which the Notes have been executed and delivered, as well as any Interest Rate Protection Agreements entered into with any Bank or any affiliate of any of them, and any applications, reimbursement agreements or other documents relating to letters of credit issued by Beneficiary for the account of Trustor. The term "Loan Documents" also includes all modifications, extensions, renewals, and replacements of each document referred to above.

1.7 Notes: Trustor's promissory notes of even date herewith, payable to the order of the Banks in the aggregate principal face amount of \$47,600,000.00, the last payment under which is due on the "Maturity Date" set forth in the Loan Agreement (as defined above), which shall in no event be later than December 28, 2028, unless such due date is accelerated, together with all renewals, extensions, modifications, amendments, restatements and replacements of such promissory note. All terms and provisions of the Notes are incorporated by this reference in this Deed of Trust.

1.8 Property: All of the following:

- (a) The Real Property;

(b) All of Trustor's right, title and interest in any land lying between the boundaries of the Real Property and the center line of any adjacent street, road, avenue, or alley, whether opened or proposed;

(c) All of Trustor's right, title and interest in and to the rents, income, receipts, revenues, issues and profits of and from the Real Property, whether such rents, income, receipts, revenues, issues or profits are attributable to the period, or are collected, prior to or subsequent to any default by Trustor;

(d) All of Trustor's right, title and interest in and to (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) springs and spring rights; (iv) reservoirs and reservoir rights; and (v) 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 the Real Property;

(e) All of Trustor's right, title and interest in and to minerals, crops, timber, trees, shrubs, flowers, and landscaping features now or hereafter located on, under or above the Real Property;

(f) All of Trustor's right, title and interest in and to machinery, apparatus, equipment, fittings, and fixtures now or hereafter owned by Trustor (whether actually or constructively attached, and including all trade, domestic, and ornamental fixtures) and now or hereafter located in, upon, or under the Real Property and used or usable in connection with any present or future operation thereof, including, without limitation, all heating, air-conditioning, freezing, lighting, laundry, incinerating and power equipment; engines; pipes; pumps; tanks; motors; conduits; switchboards; plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating, cooking, and communications apparatus; boilers, water heaters, ranges, furnaces, and burners; appliances; vacuum cleaning systems; elevators; escalators; shades; awnings; screens; storm doors and windows; stoves; refrigerators; attached cabinets; partitions; ducts and compressors; rugs and carpets; draperies; and all additions thereto and replacements therefor;

(g) All of Trustor's right, title and interest in and to development rights associated with the Real Property, whether previously or subsequently transferred to the Real Property from other real property or now or hereafter susceptible of transfer from the Real Property to other real property;

(h) All of Trustor's right, title and interest in and to awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, casualty or injury to, or decrease in the value of, any of the Real Property or the Property, including, without limitation, any and all insurance payments and proceeds relating to such property; and

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

1.9 Real Property: The tract or tracts of land described in **Exhibit A** attached, together with all of Trustor's estate and interest in all buildings, structures, and improvements now or hereafter located on such tract or tracts, as well as Trustor's right, title and interest in and to all rights-of-way, easements, and other appurtenances thereto.

1.10 Secured Obligations: All present and future obligations of Trustor to Beneficiary, or any of them, evidenced by or contained in the Loan Documents, whether stated in the form of promises, covenants, representations, warranties, conditions, or prohibitions or in any other form. The term "Secured Obligations" shall also include all debts, liabilities and obligations of Trustor under or relating to any Interest Rate Protection Agreements with any Bank or any affiliate of any Bank, and any reimbursement obligations, fees and expenses for letters of credit issued by Agent or any Bank for the account of Trustor.

1.11 Trustee: Cottonwood Title Insurance Agency, Inc., a Utah corporation, whose address is 1996 East 6400 South, Suite 120, Murray, Utah 84121.

1.12 Trustor: FDG Gauge SLC Associates, LLC, a Colorado limited liability company, whose legal address is c/o Forum Real Estate Group, LLC, 240 St. Paul Street, Suite 400, Denver, Colorado 80206, together with any future owner of the Property or any part thereof or interest therein.

ARTICLE II

GRANTING CLAUSE

2.1 Grant to Trustee. As security for the Secured Obligations, Trustor hereby grants, bargains, sells, warrants, transfers and conveys the Property to Trustee, IN TRUST, for the use and benefit of Beneficiary, with power of sale, and subject to all provisions hereof.

2.2 Security Interest to Beneficiary. As additional security for the Secured Obligations, Trustor hereby grants to Beneficiary a security interest in the following (collectively, the "Collateral"): any part of the Property, Chattels and Intangible Personality that may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate, together with all products and proceeds of all of the foregoing, in any form, including all proceeds received, due or to become due from any sale, exchange or other disposition thereof, whether such proceeds are cash or non-cash in nature, and whether represented by checks, drafts, notes or other instruments for the payment of money. To the extent any of the Collateral may be or have been acquired with funds advanced by Beneficiary under the Loan Documents, this security interest is a purchase money security interest. This Deed of Trust constitutes a Security Agreement under the Uniform Commercial Code of the state in which the Property is located (the "Code") with respect to the Collateral; all of the terms, provisions, conditions and agreements contained in this Deed of Trust pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property, and the following provisions of this Section 2.2 shall not limit the generality or applicability of any other provisions of this Deed of Trust but shall be in addition thereto:

(a) The Collateral shall be used by Trustor solely for business purposes, being installed upon the Real Property for Trustor's own use or as the equipment and furnishings furnished by Trustor, as landlord, to tenants of the Real Property;

(b) All tangible personal property constituting part of the Collateral shall be kept at the Real Property, and shall not be removed therefrom without the consent of Beneficiary (being the Secured Party as that term is used in the Code); and the Collateral may be affixed to such Real Property but shall not be affixed to any other real estate;

(c) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Trustor will, at its cost and expense, upon demand, furnish to Beneficiary such further information and will execute and deliver to Beneficiary such financing statements and other documents in form satisfactory to Beneficiary and will do all such acts and things as Beneficiary may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Secured Obligations, subject to no adverse liens or encumbrances; and Trustor will pay the cost of filing the same or filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Beneficiary to be necessary or desirable;

(d) The terms and provisions contained in this Section 2.2 and in Section 7.6 of this Deed of Trust shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code; and

(e) This Deed of Trust constitutes a financing statement under the Code with respect to the Collateral. As such, this Deed of Trust covers all items of the Collateral that are or are to become fixtures. Trustor is the "Debtor" and Administrative Agent is the "Secured Party" (as those terms are defined and used in the Code) insofar as this Deed of Trust constitutes a financing statement.

ARTICLE III

TRUSTOR'S TITLE AND AUTHORITY

3.1 Warranty of Title. Trustor represents and warrants to Beneficiary that Trustor has good and marketable title to the Real Property in fee simple absolute, subject only to the lien of general taxes for the current year, payable the following year, and those additional matters, if any, set forth in **Exhibit B** attached hereto (the "Permitted Exceptions"). Trustor further represents and warrants to Beneficiary that Trustor is the absolute owner of the Chattels and the Intangible Personality, free of any liens, encumbrances, security interests, and other claims whatsoever, except insofar as the Chattels may be encumbered by the lien of general taxes for the current year, payable in the following year, or by any of the Permitted Exceptions. Trustor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular, all of the property and property interest granted and conveyed in trust pursuant to this Deed of Trust, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof. The warranties contained in this Section 3.1 shall survive foreclosure of this Deed of Trust, and shall inure to the benefit of

and be enforceable by any person who may acquire title to the Property, the Chattels, or the Intangible Personality pursuant to any such foreclosure.

3.2 Waiver of Homestead and Other Exemptions. To the extent permitted by law, Trustor hereby waives all rights to any homestead or other exemption to which Trustor would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law.

3.3 Due Authorization. If Trustor is other than a natural person, then Trustor represents and warrants to Beneficiary that the execution of this document by each individual who executes this document on behalf of Trustor has been duly authorized by all necessary corporate, partnership, or other action on the part of Trustor.

ARTICLE IV

TRUSTOR'S AFFIRMATIVE COVENANTS

4.1 Payment of Notes. Trustor will pay all principal, interest, and other sums payable under the Notes, on the dates when such payments are due, without notice or demand.

4.2 Performance of Other Obligations. Trustor will promptly and strictly perform and comply with all other covenants, conditions, and prohibitions required of Trustor by the terms of the Loan Documents.

4.3 Other Encumbrances. Trustor will promptly and strictly perform and comply with all covenants, conditions, and prohibitions required of Trustor in connection with any other encumbrance affecting the Property, the Chattels, or the Intangible Personality, or any part thereof, or any interest therein, regardless of whether such other encumbrance is superior or subordinate to the lien hereof.

4.4 Payment of Taxes.

(a) **Property Taxes.** Trustor will pay, before delinquency, all taxes and assessments, general or special, which may be levied or imposed at any time against Trustor's interest and estate in the Property, the Chattels, or the Intangible Personality. Within ten (10) days after each payment of any such tax or assessment, Trustor will deliver to Beneficiary, without notice or demand, an official receipt for such payment.

(b) **Deposit for Taxes.** Upon the occurrence of a default or Event of Default, if Beneficiary shall so request, Trustor will immediately deposit with Beneficiary an amount equal to one-twelfth (1/12) of the amount which Beneficiary estimates will be required to make the next annual payment of taxes, assessments, and similar governmental charges referred to in this Section 4.4, multiplied by the number of whole or partial months that have elapsed since November 30 of the current year. Thereafter, with each monthly payment under the Notes, Trustor will deposit with Beneficiary an amount equal to one-twelfth (1/12) of the amount which Beneficiary estimates will be required to make the next annual payment of taxes, assessments, and similar governmental charges referred to in this Section 4.4. The purpose of these provisions is to provide Beneficiary with sufficient funds

on hand to pay all such taxes, assessments, and other governmental charges thirty (30) days before the date on which they become past due. Provided no Event of Default exists hereunder, Beneficiary will apply the amounts so deposited to the payment of such taxes, assessments, and other charges when due, but in no event will Beneficiary be liable for any interest on any amount so deposited, and the money so received may be held and commingled with Beneficiary's own funds. Beneficiary shall have no responsibility to ensure the adequacy of the amounts deposited hereunder; in the event that such amounts are inadequate to pay such taxes, assessments and other charges, Trustor shall pay the shortfall.

(c) Intangible Taxes. If by reason of any statutory or constitutional amendment or judicial decision adopted or rendered after the date hereof, any tax, assessment or similar charge is imposed against the Notes, against Beneficiary, or against any interest of Beneficiary in any real or personal property encumbered hereby, Trustor will pay such tax, assessment or other charge before delinquency and will indemnify Beneficiary against all loss, expense, or diminution of income in connection therewith. In the event Trustor is unable to do so, either for economic reasons or because the legal provisions or decisions creating such tax, assessment or charge forbid Trustor from doing so, then the Notes will, at Beneficiary's option, become due and payable in full upon thirty (30) days' notice to Trustor.

(d) Right to Contest. Notwithstanding any other provision of this Section 4.4, Trustor will not be deemed to be in default solely by reason of Trustor's failure to pay any tax, assessment or similar governmental charge so long as, in Beneficiary's judgment, each of the following conditions is satisfied:

(i) Trustor is engaged in and diligently pursuing in good faith administrative or judicial proceedings appropriate to contest the validity or amount of such tax, assessment or charge; and

(ii) Trustor's payment of such tax, assessment or charge would necessarily and materially prejudice Trustor's prospects for success in such proceedings; and

(iii) Nonpayment of such tax, assessment or charge will not result in the loss or forfeiture of any property encumbered hereby or any interest of Beneficiary therein; and

(iv) Trustor deposits with Beneficiary, as security for such payment which may ultimately be required, a sum equal to the amount of the disputed tax, assessment or charge plus the interest, penalties, advertising charges, and other costs which Beneficiary estimates are likely to become payable if Trustor's contest is unsuccessful.

If Beneficiary determines that any one or more of such conditions is not satisfied or is no longer satisfied, Trustor will pay the tax, assessment or charge in question, together with any interest and penalties thereon, within ten (10) days after Beneficiary gives notice of such determination.

4.5 Maintenance of Insurance.

(a) Coverages Required. Trustor shall maintain or cause to be maintained insurance coverages in the amounts and in the forms required pursuant to the Loan Agreement and shall comply with all requirements set forth in the Loan Agreement pertaining to insurance.

(b) Deposit for Premiums. Upon the occurrence of a default or Event of Default, if Beneficiary shall so request, Trustor will immediately deposit with Beneficiary an amount equal to one-twelfth (1/12) of the amount which Beneficiary estimates will be required to make the next annual payments of the premium for the policies of insurance referred to in this Section 4.5, multiplied by the number of whole and partial months which have elapsed since the most recent policy anniversary date for each such policy. Thereafter, with each monthly payment under the Notes, Trustor will deposit an amount equal to one-twelfth (1/12) of the amount which Beneficiary estimates will be required to pay the next required annual premium for each insurance policy referred to in this Section 4.5. The purpose of these provisions is to provide Beneficiary with sufficient funds on hand to pay all such premiums thirty (30) days before the date on which they become past due. Provided no Event of Default exists hereunder, Beneficiary will apply the amounts so deposited to the payment of such insurance premiums when due, but in no event will Beneficiary be liable for any interest on any amounts so deposited, and the money so received may be held and commingled with Beneficiary's own funds. Beneficiary shall have no responsibility to ensure the adequacy of the amounts deposited hereunder; in the event that such amounts are inadequate to pay such insurance premiums, Trustor shall pay the shortfall.

(c) Application of Hazard Insurance Proceeds.

(i) In the event of any insured casualty to the Property or any part thereof that results in a loss of less than 25% of the full replacement value of the Property (the "Threshold"), as determined by Beneficiary, Beneficiary agrees that all insurance proceeds shall be held by Beneficiary to reimburse Trustor for the cost of restoration and repair of the Property (the "Repairs") (and shall not be applied toward the payment of the Secured Obligations until after completion of the Repairs), and shall be disbursed during completion of the Repairs, provided each of the following requirements is satisfied at the time of each request by Trustor for the disbursement of such insurance proceeds:

- (A) No Event of Default exists;
- (B) Within thirty (30) days of the loss or casualty, Trustor shall notify Beneficiary in writing of Trustor's intention to commence the Repairs within ten (10) Business Days of the settlement of any claim;
- (C) Trustor shall deliver to Beneficiary a complete budget and contracts for the Repairs, all of which will be subject to the written approval of Beneficiary and its consultants;

- (D) The plans and specifications for the Repairs have been approved by Beneficiary and all applicable governmental authorities;
- (E) Beneficiary has determined in its reasonable discretion that the financial condition of Borrower or any Guarantor (as defined in the Loan Agreement) has not suffered a material adverse change as a result of such casualty, which change is reasonably likely to materially impair the ability of Borrower or such Guarantor, as applicable, to perform any of its or his obligations under the Loan Documents;
- (F) Beneficiary has determined in its reasonable discretion that the financial condition of the Property has not suffered a material adverse change as a result of such casualty;
- (G) Trustor shall deliver to Beneficiary either (a) evidence satisfactory to Beneficiary that the insurance proceeds are sufficient to effect the Repairs and cover all operating expenses until the Repairs are completed, or (b) funds in an amount equal to the amount by which insurance proceeds are insufficient to effect such Repairs and cover such operating expenses;
- (H) Beneficiary has determined in its reasonable discretion that such restoration can be completed at least one hundred eighty (180) days prior to the Maturity Date (as defined in the Loan Agreement);
- (I) The excess of any insurance proceeds over the amount necessary to complete the Repairs shall be applied as a credit against the Secured Obligations, in the order set forth in the Note; and
- (J) The other requirements and conditions contained in this section shall be applicable.

(ii) In the event of any insured casualty to the Property or any part thereof that results in a loss greater than the Threshold, as determined by Beneficiary, then any insurance proceeds received by Beneficiary with respect to an insured casualty may be, in Beneficiary's sole discretion, either: (A) retained and applied by Beneficiary toward payment of the Secured Obligations, or (B) paid over, in whole or in part and subject to the conditions set forth in Section 4.5(c)(i), to Trustor to pay for repairs or replacements necessitated by the casualty; provided, that if all of the Secured Obligations have been performed or are discharged by the application of less than all of such insurance proceeds, then any remaining proceeds will be paid over to Trustor.

Beneficiary will have no obligation to see to the proper application of any insurance proceeds paid over to Trustor, nor will any such proceeds received by Beneficiary bear interest or be subject to any other charge for the benefit of Trustor. Beneficiary may, prior to the application of insurance proceeds, commingle them with Beneficiary's own funds and otherwise act with regard to such proceeds as Beneficiary may determine in Beneficiary's sole discretion.

(d) **Successor's Rights.** Any person who acquires title to the Property or the Chattels upon foreclosure hereunder will succeed to all of Trustor's rights under all policies of insurance maintained pursuant to this Section 4.5.

4.6 Maintenance and Repair of Property and Chattels. Trustor will at all times maintain the Property and the Chattels in good condition and repair, will diligently prosecute the completion of any building or other improvement which is at any time in the process of construction on the Property, and will promptly repair, restore, replace, or rebuild any part of the Property or the Chattels which may be affected by any casualty or any public or private taking or injury to the Property or the Chattels. All costs and expenses arising out of the foregoing shall be paid by Trustor whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Trustor will comply with all statutes, ordinances, and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Property, including, without limitation, any environmental or ecological requirements; provided, that so long as Trustor is not otherwise in default hereunder beyond any applicable notice and cure period, Trustor may, upon providing Beneficiary with security reasonably satisfactory to Beneficiary, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, or requirement. Beneficiary and any person authorized by Beneficiary may enter and inspect the Property in accordance with Section 6.9 of the Loan Agreement, and may inspect the Chattels, wherever located, in accordance with Section 6.9 of the Loan Agreement, subject to the rights of tenants under any Tenant Leases.

4.7 Performance of Lease Obligations. As used herein, the term "Tenant Leases" refers to any and all present and future leases, subleases and other agreements under the terms of which any person other than Trustor has or acquires any right to occupy or use the Property or any part thereof. Trustor shall at all times comply with all of its obligations relating to the Tenant Leases that are set forth in the Loan Agreement. Trustor agrees that Beneficiary, in its sole discretion, may advance any sum or take any action which Beneficiary believes is necessary to cure a default by the landlord under any Tenant Lease in full force and effect, and all such sums advanced by Beneficiary, together with all costs and expenses incurred by Beneficiary in connection with action taken by Beneficiary pursuant to this Section 4.7, shall be due and payable by Trustor to Beneficiary upon demand, shall constitute part of the Secured Obligations, shall bear interest until paid at the Default Rate (as defined in the Loan Agreement), and shall be secured by this Deed of Trust. So long as any Secured Obligations hereunder remain unpaid, Trustor will not, without Beneficiary's prior written consent, assign its rights under any Tenant Lease to any person other than Beneficiary.

4.8 Eminent Domain; Private Damage.

(a) If all or any part of any property encumbered hereby is taken or damaged by eminent domain or any other public or private action, Trustor will notify Beneficiary

promptly of the time and place of all meetings, hearings, trials, and other proceedings relating to such action.

(b) In the event of a Material Taking (as defined below), Beneficiary may participate in all negotiations and appear and participate in all judicial or arbitration proceedings concerning any award or payment which may be due as a result of such Material Taking, and may, in Beneficiary's reasonable discretion, compromise or settle, in the names of both Trustor and Beneficiary, any claim for any such award or payment. Any such award or payment is to be paid to Beneficiary and will be applied first to reimburse Beneficiary for all costs and expenses, including attorneys' fees, incurred by Beneficiary in connection with the ascertainment and collection of such award or payment. The balance, if any, of such award or payment may, in Beneficiary's sole discretion, either (i) be retained by Beneficiary and applied toward the Secured Obligations, or (ii) be paid over, in whole or in part and subject to such conditions as Beneficiary may impose, to Trustor for the purpose of restoring, repairing, or rebuilding any part of the encumbered property affected by the taking or damaging. As used herein "Material Taking" shall mean any eminent domain or any other public or private action if (x) the value of the property taken or damaged by such action exceeds 50% of the full replacement value of the Premises (as defined in the Loan Agreement); or (y) the taking or damaging of the portion of property subject to such action would result in (i) a diminution in the value of the remaining portion of the Premises of more than 50% of the full replacement value, (ii) a violation of the Loan-To-Value Ratio covenants set forth in Section 6.26 of the Loan Agreement, (iii) a material adverse effect on the operation of the Premises, or (iv) damage that Beneficiary has determined in its reasonable discretion cannot be restored or repaired at least one hundred eighty (180) days prior to the Maturity Date (as defined in the Loan Agreement).

(c) Beneficiary will have no duty to see to the application of any part of any award or payment released to Trustor. Trustor's duty to pay the Notes in accordance with its terms and to perform the other Secured Obligations will not be suspended by the pendency or discharged by the conclusion of any proceedings for the collection of any such award or payment, and any reduction in the Secured Obligations resulting from Beneficiary's application of any such award or payment will take effect only when Beneficiary receives such award or payment. If this Deed of Trust has been foreclosed prior to Beneficiary's receipt of such award or payment, Beneficiary may nonetheless retain such award or payment to the extent required to reimburse Beneficiary for all costs and expenses, including attorneys' fees, incurred in connection therewith, and to discharge any deficiency remaining with respect to the Secured Obligations.

4.9 Mechanics' Liens. Trustor will keep the Property free and clear of all liens and claims of liens by contractors, subcontractors, mechanics, laborers, materialmen, and other such persons, and will cause any recorded statement of any such lien to be released of record within thirty (30) days after the recording thereof. Notwithstanding the preceding sentence, however, no Event of Default will be deemed to exist with respect to this Section 4.9 if and so long as Trustor (a) contests in good faith the validity or amount of any asserted lien and diligently prosecutes or defends an action appropriate to obtain a binding determination of the disputed matter, and (b) provides Beneficiary with such security or title insurance protection as Beneficiary may require to protect Beneficiary against all loss, damage, and expense, including attorneys' fees and expenses, which Beneficiary or Trustor may incur if the asserted lien is determined to be valid.

4.10 Defense of Actions. Trustor will defend, at Trustor's expense, any action, proceeding or claim which affects any property encumbered hereby or any interest of Beneficiary in such property or in the Secured Obligations, and will indemnify and hold Beneficiary harmless from all loss, damage, cost, or expense, including attorneys' fees, which Beneficiary may incur in connection therewith.

4.11 Expenses of Enforcement. Trustor will pay all costs and expenses, including attorneys' fees, which Beneficiary may incur in connection with any effort or action (whether or not litigation or foreclosure is involved) to enforce or defend Beneficiary's rights and remedies under any of the Loan Documents, including, without limitation, all attorneys' fees, appraisal fees, consultants' fees, and other expenses incurred by Beneficiary in securing title to or possession of, and realizing upon, any security for the Secured Obligations. All such costs and expenses shall constitute part of the Secured Obligations, and may be included in the computation of the amount owed to Beneficiary for purposes of foreclosing or otherwise enforcing this Deed of Trust.

4.12 Financial Reports. Trustor will furnish or cause to be furnished to Beneficiary all financial reports or statements required under any of the Loan Documents.

4.13 Priority of Leases. To the extent Trustor has the right, under the terms of any Tenant Lease, to make such Tenant Lease subordinate to the lien hereof, Trustor will, at Beneficiary's request and Trustor's expense, take such action as may be required to effect such subordination. Conversely, Trustor will, at Beneficiary's request and Trustor's expense, take such action as may be necessary to subordinate the lien hereof to any future Tenant Lease designated by Beneficiary.

4.14 Inventories; Assembly of Chattels. Trustor will, from time to time at the request of Beneficiary, supply Beneficiary with a current inventory of the Chattels and the Intangible Personality, in such detail as Beneficiary may require. At any time while an Event of Default exists hereunder, Trustor will at Beneficiary's request assemble the Chattels and make them available to Beneficiary at any place designated by Beneficiary which is reasonably convenient to both parties.

4.15 Further Assurances; Estoppel Certificates. Trustor will execute and deliver to Beneficiary upon demand, and pay the costs of preparation and recording thereof, any further documents which Beneficiary may request to confirm or perfect the liens and security interests created or intended to be created hereby, or to confirm or perfect any evidence of the Secured Obligations. Trustor will also, within ten (10) Business Days after any request by Beneficiary, deliver to Beneficiary a signed and acknowledged statement certifying to Beneficiary, or to any proposed transferee of the Secured Obligations, (a) the balance of principal, interest, and other sums then outstanding under the Notes, and (b) whether Trustor claims to have any offsets or defenses with respect to the Secured Obligations and, if so, the nature of such offsets or defenses.

ARTICLE V

TRUSTOR'S NEGATIVE COVENANTS

5.1 Waste and Alterations. Trustor will not commit or permit any waste with respect to the Property or the Chattels. Except in connection with Trustor's initial construction of the Improvements in accordance with the Plans and Specifications and all terms and conditions of the

Loan Documents, Trustor shall not cause or permit any part of the Property, including, without limitation, any building, structure, parking lot, driveway, landscape scheme, timber, or other ground improvement, to be removed, demolished, or materially altered without the prior written consent of Beneficiary.

5.2 Zoning and Private Covenants. Trustor will not initiate, join in, or consent to any change in any zoning ordinance or classification, any change in the “zone lot” or “zone lots” (or similar zoning unit or units) presently comprising the Property, any transfer of development rights, any change in any private restrictive covenant, or any change in any other public or private restriction limiting or defining the uses which may be made of the Property or any part thereof, without the express written consent of Beneficiary. If under applicable zoning provisions the use of all or any part of the Property is or becomes a nonconforming use, Trustor will not cause such use to be discontinued or abandoned without the express written consent of Beneficiary.

5.3 Tenant Leases. Trustor will neither do nor neglect to do anything relating to Tenant Leases which is prohibited by the Loan Agreement. Except with the prior written consent of Beneficiary, Trustor will not (a) except as permitted pursuant to Section 6.3 of the Loan Agreement, collect rent from all or any part of the Property for more than one (1) month in advance, (b) except as permitted pursuant to Section 6.3 of the Loan Agreement, modify any Tenant Lease, (c) assign the rents from the Property or any part thereof, or (d) consent to the cancellation or surrender of all or any part of any Tenant Lease.

5.4 Transfer of Property. Trustor will not convey, lease, sell, assign, transfer, convert the intended use of or substantially modify, either voluntarily or involuntarily, the Property or any part thereof or interest therein, or grant any options or similar rights with respect thereto, without the prior written consent of Beneficiary, which may be withheld for any reason, except that Trustor may enter into leases of the Property pursuant to Section 6.3 of the Loan Agreement.

5.5 Due on Encumbrance – Consent by Beneficiary. Beneficiary may, at its option, after expiration of any applicable notice and cure period, declare immediately due and payable all sums secured by this Deed of Trust in the event that all or any part of the Property is subjected to a lien, encumbrance or any other interest in favor of a related or a third party person or entity, including, without limitation, a property or homeowner’s association, taxing authority, governmental or quasi-governmental agency or vendor of perishable or agricultural goods, without Beneficiary’s prior written consent, which consent may be withheld for any reason. This shall include a lien or interest created consensually or by operation of law, or arising from a default under any applicable declarations or covenants affecting the Property. It is intended that this due on encumbrance clause be triggered by any lien or interest affecting the Property which has not been consented to by Beneficiary in advance and in writing, and which arises after the effective date of Beneficiary’s loan policy of title insurance (obtained as of the date of Loan closing as such Loan may be modified or extended), or after Loan closing, as applicable. Provided, however, that this option shall not be exercised by Beneficiary if such exercise is prohibited by applicable federal or state law.

5.6 Assessments Against Property. Trustor will not, without the prior written approval of Beneficiary, which may be withheld for any reason, consent to the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts, or any other body or entity of any type, or consent to any other event, that would or might

result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Property other than with respect to completion of the initial construction at the Property, and this provision shall, to the maximum extent permitted by applicable law, serve as RECORD NOTICE to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Trustor or any other person or entity include all or any portion of the Property in such district or districts, whether formed or in the process of formation, without first obtaining Beneficiary's express written consent, the rights of Beneficiary in the Property pursuant to this Deed of Trust or following any foreclosure of this Deed of Trust, and the rights of any person or entity to whom Beneficiary might transfer the Property following a foreclosure of this Deed of Trust, shall be senior and superior to any taxes, charges, fees, assessments or other impositions of any kind or nature whatsoever, or liens (whether statutory, contractual or otherwise) levied or imposed, or to be levied or imposed, upon the Property or any portion thereof as a result of inclusion of the Property in such district or districts.

5.7 Further Encumbrance of Chattels and Intangible Personality. Trustor will not create or permit any junior lien, security interest or other monetary encumbrance against the Chattels or the Intangible Personality without the prior written consent of Beneficiary, which may be withheld for any reason.

5.8 Transfer or Removal of Chattels. Trustor will not sell, transfer or remove from the Property all or any part of the Chattels, unless the items sold, transferred, or removed are simultaneously replaced with similar items of equal or greater value; provided, however, Trustor shall have the right to sell, transfer or otherwise dispose of any obsolete or non-functioning tangible personal property located at the Real Property so long as Trustor promptly replaces such personal property with new or like-new property.

5.9 Change of Name. Trustor will not change the name under which Trustor does business, or adopt or begin doing business under any other name or assumed or trade name, or change the state in which it is organized or registered, without first notifying Beneficiary of Trustor's intention to do so and delivering to Beneficiary such executed modifications or supplements to this Deed of Trust (and to any financing statement which may be filed in connection therewith) as Beneficiary may require.

5.10 Improper Use of Property, Chattels or Intangible Personality. Trustor will not use the Property, the Chattels or the Intangible Personality for any purpose or in any manner which violates any applicable law, ordinance, or other governmental requirement, the requirements or conditions of any insurance policy, or any private covenant.

5.11 Use of Proceeds. Trustor will not use any funds advanced by Beneficiary under the Loan Documents for any purpose other than as permitted by the provisions of the Loan Documents.

ARTICLE VI

EVENTS OF DEFAULT

Each of the following events will constitute a default (an “Event of Default”) under this Deed of Trust and under each of the other Loan Documents:

6.1 Failure to Make Payment. Trustor’s failure to make any payment when due under the terms of the Notes or any other Loan Document;

6.2 Failure to Perform. Trustor’s breach or failure to perform, observe or meet any covenant or condition in this Deed of Trust (other than the obligation to make any payment when due) and the continuance of such failure for a period of thirty (30) days following written notice thereof from Beneficiary to Trustor; provided, however, that if such failure is not curable within such thirty (30) day period, then, so long as Trustor commences to cure such failure within such thirty (30) day period and is continually and diligently attempting to cure to completion, such failure shall not be an Event of Default unless such failure remains uncured for sixty (60) days after such written notice to Trustor. Notwithstanding the foregoing, if a specific cure period is separately provided for such breach or failure under this Deed of Trust, or if such breach or failure is otherwise addressed in this Article VI no additional cure period shall be provided by this Section 6.2;

6.3 Transfer or Encumbrance. The transfer, lease, sale, assignment, conveyance or further encumbrance of all or any portion of the Property or Trustor’s interest therein in violation of this Deed of Trust or the Loan Agreement;

6.4 Levy Against Property. The levy against any real or personal property, or the like, or any part thereof, belonging to Trustor, or representing the security for the Notes, of any execution, attachment, sequestration or other writ;

6.5 Appointment of Receiver. The appointment of a trustee or receiver for the assets, or any part thereof, of Trustor, or the appointment of a trustee or receiver for any real or personal property, or the like, or any part thereof, representing the security for the Notes;

6.6 Dissolution, Insolvency or Bankruptcy. The dissolution, termination, or liquidation of Trustor or of any other person or entity directly liable for the Secured Obligations, or the making by any such person of any assignment for the benefit of creditors, or the appointment of a receiver, liquidator, or trustee of the property of any such person, or the filing of any petition for the bankruptcy, reorganization, or arrangement of any such person pursuant to the United States Bankruptcy Code, or any similar state or federal statute (provided, that such a filing shall only be an event of default hereunder if such proceeding remains undismissed for a period of sixty (60) days), or the adjudication of any such person as bankrupt or insolvent;

6.7 Misrepresentation. The making of any representation or warranty by Trustor or any other party liable for the payment of the Notes, whether as maker, endorser, guarantor, surety or otherwise, herein or in any of the other Loan Documents or any other instrument or document modifying, renewing, extending, evidencing, securing or pertaining to the Notes, that is false, misleading or erroneous in any material respect;

6.8 Judgments. The failure of Trustor or any party liable for the payment of the Notes, whether as maker, endorser, guarantor, surety or otherwise, to pay any money judgment against any such party before the expiration of thirty (30) days after such judgment becomes final and no longer appealable;

6.9 Admissions Regarding Debts. The admission of Trustor or any other party liable for the payment of the Notes, whether as maker, endorser, guarantor, surety or otherwise, in writing of any such party's inability to pay such party's debts as they become due;

6.10 Assertion of Priority. The assertion of any claim of priority over this Deed of Trust, by title, lien, or otherwise, unless Trustor within thirty (30) days after such assertion either causes the assertion to be withdrawn or provides Beneficiary with such security as Beneficiary may require to protect Beneficiary against all loss, damage, or expense, including attorneys' fees, which Beneficiary may incur in the event such assertion is upheld;

6.11 Interest Rate Protection Agreements. The occurrence of any "Event of Default" or "Termination Event" as defined in any Interest Rate Protection Agreement, or the termination or amendment of any Interest Rate Protection Agreement without Beneficiary's prior written consent; or

6.12 Other Loan Documents. The occurrence of any default or event of default under any of the other Loan Documents, after any applicable notice has been given and the lapse of all applicable grace periods thereunder.

ARTICLE VII

BENEFICIARY'S REMEDIES

Immediately upon or any time after the occurrence of any Event of Default hereunder, Beneficiary may exercise any remedy available at law or in equity, including, without limitation, 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 (in each case to the maximum extent permitted by applicable law):

7.1 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 payments made and expenses (including attorneys' fees) incurred by Beneficiary in this connection, together with interest thereon at the Default Rate 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, without limitation, insurance or condemnation proceeds and amounts deposited for taxes, insurance premiums, or other purposes.

7.2 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.

7.3 Acceleration of Secured Obligations. Beneficiary may, without notice or demand, declare all of the Secured Obligations immediately due and payable in full.

7.4 Suit for Monetary Relief. With or without accelerating the maturity of the Secured Obligations, Beneficiary may sue from time to time for any payment due under any of the Loan Documents, or for money damages resulting from Trustor's default under any of the Loan Documents.

7.5 Possession of Property. Beneficiary may enter and take possession of the Property without seeking or obtaining the appointment of a receiver, may employ a managing agent for the Property, and may lease or rent all or any part of the Property, either in Beneficiary's name or in the name of Trustor, and may collect the rents, issues, and profits of the Property. Any revenues collected by Beneficiary under this Section 7.5 will be applied first toward payment of all expenses (including attorneys' fees) incurred by Beneficiary, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance, if any, will be applied against the Secured Obligations.

7.6 Enforcement of Security Interests. Beneficiary may exercise all rights of a secured party under the Uniform Commercial Code with respect to the Chattels and the Intangible Personality, including, without limitation, taking possession of, holding, and selling the Chattels and enforcing or otherwise realizing upon any accounts and general intangibles. 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 five (5) 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.

7.7 Foreclosure Against Property. Beneficiary may foreclose this Deed of Trust, either by judicial action or by power of sale through the Trustee in accordance with the laws and procedures applicable to foreclosures in Utah, including but not limited to Utah Code Ann. § 57-1-20 et seq. If this Deed of Trust encumbers more than one parcel of real estate, foreclosure may be by separate parcel or en masse, to the extent allowed by law. All fees, costs and expenses of any kind incurred by Beneficiary in connection with foreclosure of this Deed of Trust, including, without limitation, the costs of any appraisals of the Property obtained by Beneficiary, all costs of any receivership for the Property advanced by Beneficiary, all costs of any environmental audits or tests incurred by Beneficiary and all attorneys' and consultants' fees incurred by Beneficiary, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Trustor to Beneficiary at any foreclosure sale. Subject to the requirements of applicable law (including, without limitation, Utah Code Ann. §57-1-29), the proceeds of any sale under this Section shall be applied first to the fees and expenses of the Trustee or other officer conducting the sale (all of which shall be part of the obligations secured by this Deed of Trust), and then to the reduction or discharge of the Secured Obligations; any surplus remaining shall be paid over to Trustor or to such other person or persons as may be lawfully entitled to such surplus. Beneficiary may bid at any such foreclosure sale, and in connection therewith Beneficiary may credit bid all or any portion of the Secured Obligations (including, without limitation, the Trustee's fees and expenses, Beneficiary's attorneys' and appraisal fees,

and all other expenses incurred by Beneficiary in undertaking the foreclosure) to the extent permitted by Utah Code Ann. §57-1-28. Nothing in this Section or elsewhere in this Deed of Trust dealing with foreclosure procedures or specifying particular actions to be taken by Beneficiary or by Trustee or any similar officer shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Utah law, and any such inconsistency shall be resolved in favor of Utah law applicable at the time of foreclosure.

7.8 Appointment of Receiver. Beneficiary shall be entitled, as a matter of absolute right and without regard to the value of any security for the Secured Obligations or the solvency of any person liable therefor, to the appointment of a receiver for the Property upon ex parte application to any court of competent jurisdiction. Trustor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and his agents shall be empowered (a) to take possession of the Property and any businesses conducted by Trustor or any other person thereon and any business assets used in connection therewith and, if the receiver deems it appropriate, to operate the same, (b) to exclude Trustor and Trustor's agents, servants, and employees from the Property, (c) to collect the rents, issues, profits, and income therefrom, (d) to complete any construction which may be in progress, (e) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (f) to use all stores of materials, supplies, and maintenance equipment on the Property and replace such items at the expense of the receivership estate, (g) to pay all taxes and assessments against the Property and the Chattels, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, and (h) generally to do anything which Trustor could legally do if Trustor were in possession of the Property. All expenses incurred by the receiver or his agents shall constitute a part of the Secured Obligations. Any revenues collected by the receiver shall, subject to applicable law, be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Beneficiary, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance shall be applied toward the Secured Obligations or in such other manner as the court may direct. Unless sooner terminated with the express consent of Beneficiary, any such receivership will continue until the Secured Obligations have been discharged in full, or until title to the Property has passed after foreclosure sale.

7.9 Right to Make Repairs, Improvements. Should any part of the Property come into the possession of Beneficiary, whether before or after an Event of Default, Beneficiary may use, operate, and/or make repairs, alterations, additions and improvements to the Property for the purpose of preserving it or its value. Trustor covenants to promptly reimburse and pay to Beneficiary, at the place where the Notes 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 Property, together with interest thereon from the date incurred by Beneficiary at the Default Rate, 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 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 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.

7.10 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.

ARTICLE VIII

ASSIGNMENT OF LEASES AND RENTS

8.1 Assignment of Leases and Rents. As further security for the Secured Obligations, Trustor hereby absolutely, unconditionally and presently grants, transfers and collaterally assigns to Beneficiary and grants Beneficiary a security interest in all rents (including, without limitation, in all "rents" as defined in the Utah Act (as defined below)), royalties, issues, profits, income and revenues (collectively, "Rents") now or hereafter due or payable for the occupancy or use of the Property, and all Tenant Leases, whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the Property; on the condition that Beneficiary hereby grants to Trustor the right to collect and retain such Rents prior to the occurrence of any Event of Default hereunder. Such right shall be revocable by Beneficiary without notice to Trustor at any time after the occurrence and during the continuance of an Event of Default, and immediately upon any such revocation, Beneficiary shall be entitled to receive, and Trustor shall deliver to Beneficiary, any and all Rents theretofore collected by Trustor which remain in the possession or control of Trustor. Trustor represents that the Rents and the Tenant Leases have not been heretofore sold, assigned, transferred or set over by any instrument now in force and will not at any time during the life of this assignment be sold, assigned, transferred or set over by Trustor or by any person or persons whosoever; and Trustor has good right to sell, assign, transfer and set over the same and to grant to and confer upon Beneficiary the rights, interest, powers and authorities herein granted and conferred. Failure of Beneficiary at any time or from time to time to enforce the assignment of Rents and leases under this Section 8.1 shall not in any manner prevent its subsequent enforcement, and Beneficiary is not obligated to collect anything hereunder, but is accountable only for sums actually collected. This Section 8.1 is subject to the Utah Uniform Assignment of Rents Act, Utah Code Ann. § 57-26-101 et seq. (the "Utah Act"), and in the event of any conflict or inconsistency between the provisions of this Section 8.1 and the provisions of the Utah Act, the provisions of the Utah Act shall control. Beneficiary shall have all rights and remedies available under the Utah Act and to the extent allowed by law those rights and remedies shall be cumulative with all rights and remedies hereunder.

8.2 Further Assignments. Trustor shall give Beneficiary at any time upon demand any further or additional forms of assignment of transfer of such Rents, Tenant Leases and security as may be reasonably requested by Beneficiary, and shall deliver to Beneficiary executed copies of all such Tenant Leases and security.

8.3 Application of Rents. Beneficiary shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder for its services or that of its agents in collecting such monies. Any monies received by Beneficiary hereunder may be applied when received from time to time in payment of any taxes, assessments or other liens affecting the Property regardless of the delinquency, such application to be in such order as Beneficiary may

determine. The acceptance of this Deed of Trust by Beneficiary or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Tenant Lease nor an assumption of any liability under any Tenant Lease.

8.4 Collection of Rents. Upon or at any time after an Event of Default shall have occurred and be continuing, Beneficiary may declare all sums secured hereby immediately due and payable, and may, at its option, without notice, and whether or not the Secured Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, in each case to the maximum extent permitted by applicable law, (i) enter upon, take possession of, manage and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property); (ii) take possession of any and all Rents that may previously have been collected by Trustor and which remain in the possession or control of Trustor, together with any bank or similar accounts in which any such Rents may be deposited or held; (iii) make, cancel, enforce or modify Tenant Leases; (iv) obtain and evict tenants; (v) fix or modify rents; (vi) do any acts which Beneficiary deems reasonably proper to protect the security thereof; and (vii) either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive such Rents, including those past due and unpaid. In connection with the foregoing, Beneficiary shall be entitled and empowered to employ attorneys, and management, rental and other agents in and about the Real Property and to effect the matters which Beneficiary is empowered to do, and in the event Beneficiary shall itself effect such matters, Beneficiary shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the reasonable fees, charges, costs and expenses of Beneficiary or such persons shall be additional Secured Obligations. Beneficiary may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including reasonable attorneys' and agents' fees, charges, costs and expenses, as aforesaid, upon any Secured Obligations, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under the Notes or this Deed of Trust or invalidate any act done pursuant to such notice.

8.5 Authority of Beneficiary. Any tenants or occupants of any part of the Real Property are hereby authorized to recognize the claims of Beneficiary hereunder without investigating the reason for any action taken by Beneficiary, or the validity or the amount of indebtedness owing to Beneficiary, or the existence of any default in the Notes or this Deed of Trust, or under or by reason of this assignment of Rents and leases, or the application to be made by Beneficiary of any amounts to be paid to Beneficiary. The sole signature of Beneficiary shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Beneficiary for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Property. Checks for all or any part of the rentals collected under the exercise of this assignment of Rents and leases shall be drawn to the exclusive order of Beneficiary.

8.6 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 of the Property, 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 of the Property or by reason of the assignment; 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 claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Trustor shall reimburse Beneficiary therefor on demand.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 Time of the Essence. Time is of the essence with respect to all provisions of the Loan Documents.

9.2 Joint and Several Obligations. If Trustor is more than one person or entity, then all persons or entities comprising Trustor are jointly and severally liable for all of the Secured Obligations.

9.3 Rights and Remedies Cumulative. Beneficiary's rights and remedies under each of the Loan Documents are cumulative of the right and remedies available to Beneficiary under each of the other Loan Documents and those otherwise available to Beneficiary at law or in equity. No act of Beneficiary shall be construed as an election to proceed under any particular provision of any Loan Document to the exclusion of any other provision in the same or any other Loan Document, or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary.

9.4 No Implied Waivers. Beneficiary shall not be deemed to have waived any provision of any Loan Document unless such waiver is in writing and is signed by Beneficiary. Without limiting the generality of the preceding sentence, neither Beneficiary's acceptance of any payment with knowledge of a default by Trustor, nor any failure by Beneficiary to exercise any remedy following a default by Trustor, shall be deemed a waiver of such default, and no waiver by Beneficiary of any particular default on the part of Trustor shall be deemed a waiver of any other default or of any similar default in the future.

9.5 No Third Party Rights. No person shall be a third party beneficiary of any provision of any of the Loan Documents. All provisions of the Loan Documents favoring Beneficiary are intended solely for the benefit of Beneficiary, and no third party shall be entitled to assume or expect that Beneficiary will not waive or consent to modification of any such provision in Beneficiary's sole discretion.

9.6 Preservation of Liability and Priority. Without affecting the liability of Trustor or of any other person (except a person expressly released in writing) for payment and performance of all of the Secured Obligations, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, and without impairing in any way the priority of this Deed of Trust over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Beneficiary may, either before or after the maturity of the Notes, and without notice or consent: (a) release any person liable for payment or performance of all or any part of the Secured Obligations; (b) make any agreement altering the terms of payment or performance of all or any of the Secured Obligations; (c) exercise or refrain from exercising, or waive, any right or remedy which Beneficiary may have under any of the Loan Documents; (d) accept additional security of any kind for any of the Secured Obligations; or (e) release or

otherwise deal with any real or personal property securing the Secured Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property, the Chattels, or the Intangible Personality shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Beneficiary.

9.7 Subrogation of Beneficiary. Beneficiary shall be subrogated to the lien of any previous encumbrance discharged with funds advanced by Beneficiary under the Loan Documents, regardless of whether such previous encumbrance has been released of record.

9.8 Notices. Any notice required or permitted to be given by Trustor or Beneficiary under this Deed of Trust shall be in writing and will be deemed given (a) upon personal delivery, (b) upon receipt or refusal of receipt after having been delivered to a courier service which guarantees next-business-day delivery, or (c) upon receipt or refusal of receipt after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Trustor:

FDG Gauge SLC Associates, LLC
c/o Forum Real Estate Group, LLC
240 St. Paul Street, Suite 400
Denver, Colorado 80206
Attention: Darren Fisk

With a copy to:

Forum Real Estate Group, LLC
240 St. Paul Street, Suite 400
Denver, Colorado 80206
Attention: Legal Department

With a copy to:

Fisher & Fisher PC
1125 17th Street, Suite 710
Denver, Colorado 80202
Attention: Collin Watkins

With a copy to:

SSRC Gauge Investments, LLC
c/o Red Cove Capital, LLC
7137 E. Rancho Vista Dr., Suite 108
Scottsdale, Arizona 85251
Attention: Shannon Bane

And to:

SSRC Gauge Investments, LLC
c/o Sixth Street Partners, LLC
2100 McKinney Avenue, Suite 1500
Dallas, Texas 75201
Attention: Joshua Peck, Sixth Street Legal

And to:

Safarian Choi & Bolstad LLP
555 S. Flower St., Suite 650
Los Angeles, California 90071
Attention: Alex Y. Choi, Esq.

If to Trustee:

Cottonwood Title Insurance Agency, Inc.
1996 East 6400 South, Suite 120
Murray, Utah 84121
Attention: _____

If to Beneficiary or the Banks:

Wintrust Bank, National Association
231 South LaSalle Street, 2nd Floor
Chicago, Illinois 60604
Attention: Commercial Lending

With a copy to:

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, Colorado 80202
Attention: Julie E. Gifford, Esq.

Any party may change such party's address for notices or copies of notices by giving notice to the other parties in accordance with this Section 9.8.

9.9 Defeasance. Upon payment and performance in full of all of the Secured Obligations, Beneficiary and Trustee, as applicable, will execute and deliver to Trustor such documents as may be required to release this Deed of Trust of record.

9.10 Illegality. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Deed of Trust, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the

rights and liens created by this Deed of Trust shall be invalid or unenforceable as to any part of the Secured Obligations, then the unsecured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Obligations.

9.11 Usury Savings Clause. It is expressly stipulated and agreed to be the intent of Beneficiary and Trustor at all times to comply with the applicable law governing the highest lawful interest rate. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Notes or under any of the other Loan Documents, or, contracted for, charged, taken, reserved or received with respect to the loan evidenced thereby, or if acceleration of the maturity of the Notes, any prepayment by Trustor, or any other circumstance whatsoever, results in Trustor having paid any interest in excess of that permitted by applicable law, then it is the express intent of Trustor and Beneficiary that all excess amounts theretofore collected by Beneficiary be credited on the principal balance of the Notes (or, if the Notes has been or would thereby be paid in full, refunded to Trustor), and the provisions of the Notes and other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of the Notes does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Beneficiary does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Beneficiary for the use, forbearance or detention of the indebtedness evidenced hereby or by the Notes shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the maximum rate or amount of interest permitted under applicable law. The term "applicable law" as used herein shall mean any federal or state law applicable to the loan made by Beneficiary to Trustor pursuant to the Loan Agreement.

9.12 Obligations Binding Upon Trustor's Successors. This Deed of Trust is binding upon Trustor and Trustor's successors and assigns, and shall inure to the benefit of Beneficiary and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations, and warranties of Trustor in this Deed of Trust shall be joint and several obligations of Trustor and Trustor's successors and assigns.

9.13 Governing Laws. This Deed of Trust shall be governed by the laws of the State of Utah without regard to its conflict of laws rules.

9.14 Waiver of Jury Trial. **TRUSTOR HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE ARISING IN CONNECTION WITH THIS DEED OF TRUST OR IN ANY WAY RELATED TO THE NEGOTIATION, ADMINISTRATION, MODIFICATION, EXTENSION OR COLLECTION OF THE SECURED OBLIGATIONS. TRUSTOR STATES THAT IT HAS CONFERRED SPECIFICALLY WITH BENEFICIARY WITH RESPECT TO THIS WAIVER, AND AGREES TO THIS WAIVER AFTER CONSULTATION WITH COUNSEL AND WITH FULL UNDERSTANDING OF THE IMPLICATIONS HEREOF.**

9.15 Post-Closing Easements. Notwithstanding anything to the contrary contained in this Deed of Trust, in no event shall Agent's consent be required for any easements granted by Borrower from and after the date hereof that are necessary for the construction of the Premises (as defined in the Loan Agreement), including without limitation any utility, access, right-of-way or drainage easements (collectively "Post-Closing Easements"). Agent shall cooperate in the execution of any Post-Closing Easements to the extent reasonably required, including without limitation consenting in writing to the execution of the same and agreeing that any foreclosure or enforcement of any other remedy available to Agent under this Deed of Trust will not render void or otherwise impair the validity of such Post-Closing Easement.

[The remainder of this page has been left blank intentionally.]

Signed and delivered as of the date first mentioned above.

TRUSTOR:

FDG GAUGE SLC ASSOCIATES, LLC,
a Colorado limited liability company

By: FDG Gauge HoldCo, LLC,
a Delaware limited liability company,
its sole Member

By: FDG Gauge Investor Associates,
LLC, a Colorado limited liability
company, its Manager

By: Forum Management, Inc.,
a Colorado corporation,
its Manager

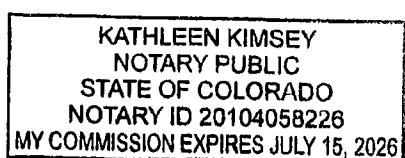
By: 
Name: Kevin Foltz
Title: Vice President

STATE OF Colorado)
City of Denver) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 8th day of December, 2022, by Kevin Foltz, as Vice President of Forum Management, Inc., a Colorado corporation, as Manager of FDG Gauge Investor Associates, LLC, a Colorado limited liability company, as Manager of FDG Gauge HoldCo, LLC, a Delaware limited liability company, as sole Member of FDG Gauge SLC Associates, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: July 15, 2034.





Notary Public

Signature Page – Deed of Trust

EXHIBIT A
to
DEED OF TRUST, SECURITY AGREEMENT,
FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS

(Legal Description)

A parcel of land located in the Southeast quarter of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian, County of Salt Lake, State of Utah, more particularly described as follows:

Beginning at a point on the North right-of-way line of North Temple Street which is South 89°58'02" West a distance of 1340.26 feet along the section line; thence North 00°01'56" West a distance of 803.78 feet from the Southeast quarter corner of Section 34, Township 1 North, Range 1 West, Salt Lake Base and Meridian; continuing thence along said right-of-way line South 89°58'38" West a distance of 216.92 feet; thence leaving said right-of-way line North 00°00'00" East (North) a distance of 587.31 feet; thence North 90°00'00" East (East) a distance of 16.39 feet; thence South 00°01'56" East a distance of 97.91 feet; thence North 89°58'38" East 200.20 feet to the Northeast corner of Lot 22 Block 2 of Agricultural Park Plat B Subdivision and also a point on the West right-of-way line of Cornell Street; thence along said West right-of-way line South 00°01'56" East a distance of 489.40 feet to the point of beginning.

EXHIBIT B
to
**DEED OF TRUST, SECURITY AGREEMENT,
FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS**

(Permitted Exceptions)

1. Taxes and assessments for the year 2023 and subsequent years, a lien not yet due or payable.
2. The herein described Real Property is located within the boundaries of Salt Lake City, Metropolitan Water District of Salt Lake and Sandy, Salt Lake City Mosquito Abatement District, Central Utah Water Conservancy District, North Temple Urban Renewal Project, and is subject to any and all charges and assessments levied thereunder.

NOTE: None due and payable as of the date hereof.

3. The herein described Real Property is included within the boundaries of the Salt Lake City, Utah, North Temple Boulevard Assessment Area No. LC-109017 and No. M-10918 as disclosed in that certain Notice of Encumbrance and Assessment Area Designation recorded September 29, 2010 as Entry No. 11041553 in Book 9863 at Page 3250.

NOTE: None due and payable as of the date hereof.

4. The herein described Real Property is included within the boundaries of the North Temple Project Area Plan as disclosed in that certain Ordinance No. 56 of 2011 recorded October 13, 2011 as Entry No. 11260079 in Book 9957 at Page 6699.
5. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Real Property, together with all rights, privileges, and immunities relating thereto.
6. Claim, right, title or interest to water or water rights whether or not shown by the Public Records.
7. Easements, if any, for public utilities, pipelines or facilities installed in any portion of the vacated alley, lying within the Real Property, together with the right of ingress and egress to repair, maintain, replace and remove the same, as provided for and/or reserved in that certain Salt Lake City Ordinance recorded September 17, 1975 as Entry No. 2743432 in Book 3972 at Page 435.
8. Any easements and/or rights of way for the water distribution system and appurtenances of the Brighton and North Point Irrigation Company and/or the State of Utah Board of Water Resources, as the same may be found to intersect the herein described Real Property, as disclosed by that certain Easement to Use Distribution system recorded September 26, 1988 as Entry No. 4680089 in Book 6067 at Page 404.

9. Avigation Easement in favor of Salt Lake City Corporation for the free and unrestricted passage of aircraft of any and all kinds in, through, across and about the airspace over the Real Property, recorded September 25, 2006 as Entry No. 9854914, in Book 9355, at Page 4629.
10. Right of Way Easement in favor of PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power to construct, reconstruct, operate, maintain and repair electric transmission and other equipment and incidental purposes, over, under and across a portion of the subject Real Property. Said Easement recorded March 10, 2011, as Entry No. 11148312, in Book 9910, at Page 8135.
11. Underground Right of Way Easement in favor of PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power to construct, reconstruct, operate, maintain and repair electric transmission and other equipment and incidental purposes, over, under and across a portion of the subject Real Property. Said Easement recorded March 10, 2011, as Entry No. 11148316, in Book 9910, at Page 8159.
12. Subject to the matters affecting title, as disclosed on that certain survey prepared by Johnson Engineering, having been certified under the date of December 8, 2022, as Job No. 19-038, by David B. Johnson, a Professional Land Surveyor holding License No. 5338869.
13. Terms and provisions of that certain Revocable Permit Agreement made effective as of August 25, 2022 between Salt Lake City Corporation and FDG Gauge SLC Associates, LLC, a Colorado limited liability company (the “Permittee”), and Power Station Investments, LLC, a Utah limited liability company (the “Owner”), as disclosed by that certain Memorandum of Revocable Permit Agreement recorded September 7, 2022 as Entry No. 14011945 in Book 11370 at Page 4919.