

W3098471

Recording requested by:

And when recorded mail to:

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

E# 3098471 PG 1 OF 41
Leann H. Kilts, WEBER COUNTY RECORDER
03-Nov-20 1114 AM FEE \$40.00 DEP DA
REC FOR: MOUNTAIN VIEW TITLE - OGDEN
ELECTRONICALLY RECORDED

TAX PARCEL ID NUMBER: 08-034-0070

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

THIS DEED OF TRUST, SECURITY AGREEMENT, FIXTURE FILING, FINANCING STATEMENT AND ASSIGNMENT OF LEASES AND RENTS (this “**Deed of Trust**”) is given as of November 3, 2020, by BRIA HOLDINGS, LLC, a Utah limited liability company (“**Borrower**”), as the “grantor” hereunder, to MOUNTAIN VIEW TITLE AND ESCROW, INC. (“**Trustee**”), for the use and benefit of THE VARIABLE ANNUITY LIFE INSURANCE COMPANY, a Texas corporation (“**Lender**”), as the “beneficiary” hereunder.

ARTICLE 1

PARTIES, PROPERTY, AND DEFINITIONS

The following terms and references shall have the meanings indicated:

1.1 Borrower: The Borrower named in the introductory paragraph of this Deed of Trust, whose legal address is 1798 West 5150 South, Suite 103, Roy, Utah 84067, together with any future owner of the Property or any part thereof or interest therein.

1.2 Cash Collateral Agreement: The Cash Collateral Agreement of even date herewith among Borrower, Lender and the “Servicer” referenced therein.

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

1.4 Note (VALIC): Borrower’s promissory note of even date herewith, payable to the order of Lender in the principal face amount of \$33,096,000.00, the last payment under which is

due on November 5, 2035, unless such due date is accelerated, together with all renewals, extensions and modifications of such promissory note.

1.5 Note (VALIC – FORTITUDE): Borrower's promissory note of even date herewith, payable to the order of Lender in the principal face amount of \$6,304,000.00, the last payment under which is due on November 5, 2035, unless such due date is accelerated, together with all renewals, extensions and modifications of such promissory note.

1.6 Controlling Persons: Collectively, (a) Guarantor, (b) if Borrower is a partnership or joint venture, all general partners or joint venturers of Borrower, (c) if Borrower is a limited liability company, all managers or managing members of Borrower, (d) any other party directly or indirectly liable for payment of the Secured Obligations, whether as maker, endorser, guarantor, surety, general partner, or otherwise, and (e) any successor to any of the foregoing.

1.7 Default: Any matter which, with the giving of notice, passage of time, or both, would constitute an Event of Default.

1.8 Environmental Indemnity Agreement: The Environmental Indemnity Agreement of even date herewith made by Borrower and Guarantor for the benefit of Lender, as amended, modified, supplemented, replaced, or restated from time to time.

1.9 ERISA: The Employee Retirement Income Security Act of 1974, as amended, together with all rules and regulations issued thereunder.

1.10 Event of Default: As defined in Article 6.

1.11 Guarantor: Mike Schultz, an individual.

1.12 Guaranty Agreement: The Guaranty Agreement of even date herewith made by Guarantor for the benefit of Lender, as amended, modified, supplemented, replaced, or restated from time to time.

1.13 Insurance Agreement: The Agreement Concerning Insurance Requirements of even date herewith executed by Borrower for the benefit of Lender, as amended, modified, supplemented, replaced, or restated from time to time.

1.14 Intangible Personality: The right to use all trademarks and trade names and symbols or logos 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 Property, together with all accounts, rents, issues, income, profits, fees, charges or other payments for the use or occupancy of rooms and other public facilities at the Property, deposit accounts, letter of credit rights, investment property, monies in the possession of Lender (including, without limitation, proceeds from insurance, retainages and deposits for taxes and insurance), Permits, contract rights (including, without limitation, rights to receive insurance proceeds) and general intangibles (whether now owned or hereafter acquired, and including proceeds thereof) relating to or arising from Borrower'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 Borrower may have or

acquire to transfer any development rights from the Property to other real property, and any development rights which may be so transferred.

1.15 Lease Certificate: The Certificate Concerning Leases and Financial Condition of even date herewith made by Borrower to Lender concerning Leases of the Property.

1.16 Leases: Any and all leases, subleases and other agreements under the terms of which any person other than Borrower has or acquires any right to occupy or use the Property, or any part thereof.

1.17 Lender: The Lender named in the introductory paragraph of this Deed of Trust, whose legal address is c/o AIG Investments, 777 S. Figueroa Street, 16th Floor, Los Angeles, California 90017 5800, together with any future holder of the Note.

1.18 Loan: The loan from Lender to Borrower evidenced by the Note.

1.19 Loan Documents: The Note, all of the deeds of trust, mortgages and other instruments and documents securing or executed and delivered in connection with the Note, including this Deed of Trust, the Insurance Agreement, the Environmental Indemnity Agreement, the Guaranty Agreement, the Cash Collateral Agreement, the Reserve Agreement (DSCR), the Reserve Agreement (Capital and Non-Capital Improvements), the Lease Certificate and each other document executed or delivered in connection with the transaction pursuant to which the Note has been executed and delivered. The term “**Loan Documents**” also includes all modifications, extensions, renewals, and replacements of each document referred to above.

1.20 Note: Individually and collectively, the Note (VALIC) and the Note (VALIC – FORTITUDE). All terms and provisions of the Note are incorporated by this reference in this Deed of Trust.

1.21 Permits: All permits, licenses, certificates and authorizations necessary for the beneficial development, ownership, use, occupancy, operation and maintenance of the Property.

1.22 Permitted Exceptions: The matters (excluding matters of survey) set forth in Schedule B I of the title insurance policy insuring the lien created by this Deed of Trust, in form and substance satisfactory to, and accepted by, Lender, that Borrower has caused to be delivered to Lender in connection with the Loan.

1.23 Property: The tract or tracts of land described in **Exhibit A** attached, together with the following:

(a) All buildings, structures, and improvements now or hereafter located on such tract or tracts, as well as all rights of way, easements, and other appurtenances thereto;

(b) Any land lying between the boundaries of such tract or tracts and the center line of any adjacent street, road, avenue, or alley, whether opened or proposed;

(c) All of the rents, income, receipts, revenues, issues and profits of and from such tract or tracts and improvements;

(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; 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 Borrower and which are appurtenant to or which have been used in connection with such tract or tracts or improvements;

(e) All minerals, crops, timber, trees, shrubs, flowers, and landscaping features now or hereafter located on, under or above such tract or tracts;

(f) All machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached, and including all trade, domestic, and ornamental fixtures) now or hereafter located in, upon, or under such tract or tracts or improvements and used or usable in connection with any present or future operation thereof, including but not limited to 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 development rights associated with such tract or tracts, whether previously or subsequently transferred to such tract or tracts from other real property or now or hereafter susceptible of transfer from such tract or tracts to other real property;

(h) All awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, injury to, or decrease in the value of, any of such property; and

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

1.24 Reserve Agreement (DSCR): The Reserve Agreement (DSCR) of even date herewith among Borrower, Lender and the "Servicer" referenced therein, as amended, modified, supplemented, replaced, or restated from time to time.

1.25 Reserve Agreement (Capital and Non-Capital Improvements): The Reserve Agreement (Capital and Non-Capital Improvements) of even date herewith among Borrower, Lender and the "Servicer" referenced therein, as amended, modified, supplemented, replaced, or restated from time to time.

1.26 Secured Obligations: All present and future obligations of Borrower to Lender evidenced by or contained in the Note, the Environmental Indemnity Agreement, this Deed of Trust and all other Loan Documents, whether stated in the form of promises, covenants, representations, warranties, conditions, or prohibitions or in any other form. If the maturity of the Note secured by this Deed of Trust is accelerated, the Secured Obligations shall include an amount

equal to any prepayment premium which would be payable under the terms of the Note as if the Note were prepaid in full on the date of the acceleration. If under the terms of the Note no voluntary prepayment would be permissible on the date of such acceleration, then the prepayment fee or premium to be included in the Secured Obligations shall be equal to one hundred fifty percent (150%) of the highest prepayment fee or premium set forth in the Note, calculated as of the date of such acceleration, as if prepayment were permitted on such date.

1.27 State: The State in which the Property is located.

1.28 Trustee: The Trustee named in the introductory paragraph of this Deed of Trust, whose address is 365 West 1550 North, Suite A, Layton, Utah 84041.

ARTICLE 2 **GRANTING CLAUSE**

2.1 Grant to Trustee. As security for the Secured Obligations, Borrower hereby grants, bargains, sells, warrants and conveys the Property to Trustee, in trust, with power of sale, for the use and benefit of Lender, and subject to all provisions hereof.

2.2 Security Interest to Lender. As additional security for the Secured Obligations, Borrower hereby grants to Lender a security interest in the Property, Chattels and Intangible Personality. To the extent any of the Property, Chattels or Intangible Personality may be or have been acquired with funds advanced by Lender 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 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 (all collectively hereinafter called “**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 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 Borrower solely for business purposes, and all Collateral (other than the Intangible Personality) shall be installed upon the real estate comprising part of the Property for Borrower’s own use or as the equipment and furnishings furnished by Borrower, as landlord, to tenants of the Property;

(b) The Collateral (other than the Intangible Personality) shall be kept at the real estate comprising a part of the Property, and shall not be removed therefrom without the consent of Lender (being the Secured Party as that term is used in the Code); and the Collateral (other than the Intangible Personality) may be affixed to such real estate 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 Borrower will, at its cost and expense, upon demand, furnish to Lender such further information and will execute and deliver to Lender such financing statements and other documents in form satisfactory to Lender and will do all such acts and things

as Lender may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected first priority security interest in the Collateral as security for the Secured Obligations, subject to no adverse liens or encumbrances; and Borrower 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 Lender to be necessary or desirable;

(d) The terms and provisions contained in this Section 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. The filing of this Deed of Trust in the real estate records of the county where the Property is located shall constitute a fixture filing in accordance with the Code. Information concerning the security interests created hereby may be obtained at the addresses set forth in Article 1 of this Deed of Trust. Borrower is the "**Debtor**" and Lender 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 3 BORROWER'S REPRESENTATIONS AND WARRANTIES

3.1 **Warranty of Title.** Borrower represents and warrants to Lender that:

(a) Borrower has good and marketable fee simple title to the Property, and such fee simple title is free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions;

(b) Borrower is the sole and absolute owner of the Chattels and the Intangible Personality, free and clear of all liens, encumbrances, security interests and other claims whatsoever, subject only to the Permitted Exceptions;

(c) This Deed of Trust is a valid and enforceable first lien and security interest on the Property, Chattels and Intangible Personality, subject only to the Permitted Exceptions;

(d) Borrower, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular of the property and property interests granted and conveyed pursuant to this Deed of Trust, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof; and

(e) The representations, warranties and covenants contained in this Section 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 **Due Authorization.** If Borrower is other than a natural person, then each individual who executes this document on behalf of Borrower represents and warrants to Lender

that such execution has been duly authorized by all necessary corporate, partnership, limited liability company or other action on the part of Borrower. Borrower represents that Borrower has obtained all consents and approvals required in connection with the execution, delivery and performance of this Deed of Trust.

3.3 Other Representations and Warranties. Borrower represents and warrants to Lender as follows:

(a) Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Utah. The sole Controlling Persons of Borrower are Guarantor and Mike Schultz, Inc., a Utah corporation. Mike Schultz, Inc. is a corporation, duly organized, validly existing and in good standing under the laws of the State of Utah, and is the manager of Borrower. Guarantor is the sole member of Mike Schultz, Inc.;

(b) The execution, delivery and performance by Borrower of the Loan Documents are within Borrower's power and authority and have been duly authorized by all necessary action;

(c) This Deed of Trust is, and each other Loan Document to which Borrower or Guarantor is a party will, when delivered hereunder, be valid and binding obligations of Borrower and Guarantor enforceable against Borrower and Guarantor in accordance with their respective terms, except as limited by equitable principles and bankruptcy, insolvency and similar laws affecting creditors' rights;

(d) The execution, delivery and performance by Borrower and Guarantor of the Loan Documents will not contravene any contractual or other restriction binding on or affecting Borrower or any Controlling Person and will not result in or require the creation of any lien, security interest, other charge or encumbrance (other than pursuant hereto) upon or with respect to any of its properties;

(e) The execution, delivery and performance by Borrower and Guarantor of the Loan Documents does not contravene any applicable law;

(f) No authorization, approval, consent or other action by, and no notice to or filing with, any court, governmental authority or regulatory body is required for the due execution, delivery and performance by Borrower and Guarantor of any of the Loan Documents or the effectiveness of any assignment of any of Borrower's rights and interests of any kind to Lender;

(g) No part of the Property, Chattels, or Intangible Personality is in the hands of a receiver, no application for a receiver is pending with respect to any portion of the Property, Chattels, or Intangible Personality, and no part of the Property, Chattels, or Intangible Personality is subject to any foreclosure or similar proceeding;

(h) Neither Borrower nor any Controlling Person has made any assignment for the benefit of creditors, nor has Borrower or any Controlling Person filed, or had filed against it, any petition in bankruptcy;

(i) There is no pending or, to the best of Borrower's knowledge, threatened, litigation, action, proceeding or investigation, including, without limitation, any condemnation proceeding, against Borrower, any Controlling Person or the Property before any court, governmental or quasi governmental, arbitrator or other authority;

(j) Borrower is a "non foreign person" within the meaning of Sections 1445 and 7701 of the United States Internal Revenue Code of 1986, as amended, and the regulations issued thereunder;

(k) Access to and egress from the Property are available and provided by public streets, and Borrower has no knowledge of any federal, state, county, municipal or other governmental plans to change the highway or road system in the vicinity of the Property or to restrict or change access from any such highway or road to the Property;

(l) All public utility services necessary for the operation of all improvements constituting part of the Property for their intended purposes are available at the boundaries of the land constituting part of the Property, including water supply, storm and sanitary sewer facilities, and natural gas, electric, telephone and cable television facilities;

(m) The Property is located in a zoning district designated "Mixed Use" Zone by the City of West Haven, Utah. Such designation permits the development, use and operation of the Property as it is currently operated as a permitted, and not as a non conforming use. The Property complies in all respects with all zoning ordinances, regulations, requirements, conditions and restrictions, including but not limited to deed restrictions and restrictive covenants, applicable to the Property;

(n) There are no special or other assessments for public improvements or otherwise now affecting the Property, nor does Borrower know of any pending or threatened special assessments affecting the Property or any contemplated improvements affecting the Property that may result in special assessments. There are no tax abatements or exemptions affecting the Property;

(o) Borrower and each Controlling Person has filed all tax returns it is required to have filed, and has paid all taxes as shown on such returns or on any assessment received pertaining to the Property;

(p) Borrower has not received any notice from any governmental body having jurisdiction over the Property as to any violation of any applicable law, or any notice from any insurance company or inspection or rating bureau setting forth any requirements as a condition to the continuation of any insurance coverage on or with respect to the Property or the continuation thereof at premium rates existing at present which have not been remedied or satisfied;

(q) Neither Borrower nor any Controlling Person is in default, in any manner which would adversely affect its properties, assets, operations or condition (financial or otherwise), in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which it is a party or by which it or any of its properties, assets or revenues are bound;

(r) Except as set forth in the Lease Certificate, there are no occupancy rights (written or oral), Leases or tenancies presently affecting any part of the Property. The Lease Certificate contains a true and correct description of all Leases presently affecting the Property. No written or oral agreements or understandings exist between Borrower and the tenants under the Leases described in the Lease Certificate that grant such tenants any rights greater than those described in the Lease Certificate or that are in any way inconsistent with the rights described in the Lease Certificate;

(s) There are no options, purchase contracts or other similar agreements of any type (written or oral) presently affecting any part of the Property;

(t) There exists no brokerage agreement with respect to any part of the Property;

(u) Except as otherwise disclosed to Lender in writing prior to the date hereof, (i) there are no contracts presently affecting the Property ("Contracts") having a term in excess of one hundred eighty (180) days or not terminable by Borrower (without penalty) on thirty (30) days' notice; (ii) Borrower has heretofore delivered to Lender true and correct copies of each of the Contracts together with all amendments thereto; (iii) Borrower is not in default of any obligations under any of the Contracts; and (iv) the Contracts represent the complete agreement between Borrower and such other parties as to the services to be performed or materials to be provided thereunder and the compensation to be paid for such services or materials, as applicable, and except as otherwise disclosed herein, such other parties possess no unsatisfied claims against Borrower. Borrower is not in default under any of the Contracts and no event has occurred which, with the passing of time or the giving of notice, or both, would constitute a default under any of the Contracts;

(v) Borrower has obtained all Permits necessary for the operation, use, ownership, development, occupancy and maintenance of the Property as a multi-family apartment project, as it is currently being operated. None of the Permits has been suspended or revoked, and all of the Permits are in full force and effect, are fully paid for, and Borrower has made or will make application for renewals of any of the Permits prior to the expiration thereof;

(w) All insurance policies held by Borrower relating to or affecting the Property are in full force and effect and shall remain in full force and effect until all Secured Obligations are satisfied. Borrower has not received any notice of default or notice terminating or threatening to terminate any such insurance policies. Borrower has made or will make application for renewals of any of such insurance policies prior to the expiration thereof;

(x) Borrower currently complies with ERISA. Neither the making of the Loan nor the exercise by Lender of any of its rights under the Loan Documents constitutes or will constitute a non exempt, prohibited transaction under ERISA; and

(y) Borrower's exact legal name is correctly set out in the introductory paragraph of this Deed of Trust. Borrower's organizational identification number is 11132728-0160. Borrower's location (as such term is used in Section 5.8 hereof) is the State of Utah.

3.4 Continuing Effect. Borrower shall be liable to Lender for any damage suffered by Lender if any of the foregoing representations are inaccurate as of the date hereof, regardless when such inaccuracy may be discovered by, or result in harm to, Lender. Borrower further represents and warrants that the foregoing representations and warranties, as well as all other representations and warranties of Borrower to Lender relative to the Loan Documents, shall remain true and correct during the term of the Note and shall survive termination of this Deed of Trust.

ARTICLE 4 BORROWER'S AFFIRMATIVE COVENANTS

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

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

4.3 Other Encumbrances. Borrower will promptly and strictly perform and comply with all covenants, conditions, and prohibitions required of Borrower 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.** Unless Borrower is depositing with Lender the amounts required pursuant to Section 4.4(b), Borrower will (i) pay, before delinquency, all taxes and assessments, general or special, which may be levied or imposed at any time against Borrower's interest and estate in the Property, the Chattels, or the Intangible Personality, and (ii) within ten days after each payment of any such tax or assessment, Borrower will deliver to Lender, without notice or demand, an official receipt for such payment. At Lender's option, Lender may retain the services of a firm to monitor the payment of all taxes and assessments relating to the Property, the cost of which shall be borne by Borrower.

(b) **Deposit for Taxes.** On or before the date hereof, Borrower shall deposit with Lender an amount equal to 1/12th of the amount which Lender estimates will be required to make the next annual payment of taxes, assessments, and similar governmental charges referred to in this Section, multiplied by the number of whole or partial months that have elapsed since the date one month prior to the most recent due date for such taxes, assessments and similar governmental charges. Thereafter, with each monthly payment under the Note, Borrower shall deposit with Lender an amount equal to 1/12th of the amount which Lender estimates will be required to pay the next annual payment of taxes, assessments, and similar governmental charges referred to in this Section. The purpose of these provisions is to provide Lender 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. If the Lender, in its sole discretion, determines that the funds impounded hereunder are, or will be, insufficient, Borrower shall upon demand pay such additional sums as Lender shall determine necessary and shall pay any increased monthly

charges requested by Lender. Provided no Default or Event of Default exists hereunder, Lender will apply the amounts so deposited to the payment of such taxes, assessments, and other charges when due, but in no event will Lender be liable for any interest on any amount so deposited, and any amount so deposited may be held and commingled with Lender's own funds.

(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 Note, against Lender in connection with the Loan, or against any interest of Lender in any real or personal property encumbered hereby, Borrower will pay such tax, assessment, or other charge before delinquency and will indemnify Lender against all loss, expense, or diminution of income in connection therewith. In the event Borrower is unable to do so, either for economic reasons or because the legal provisions or decisions creating such tax, assessment or charge forbid Borrower from doing so, then the Note will, at Lender's option, become due and payable in full upon thirty (30) days' notice to Borrower.

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

(i) Borrower 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) Borrower's payment of such tax, assessment, or charge would necessarily and materially prejudice Borrower'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 Lender therein; and

(iv) Borrower deposits with Lender, 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 Lender estimates are likely to become payable if Borrower's contest is unsuccessful.

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

4.5 Maintenance of Insurance.

(a) Coverages Required. Borrower shall maintain or cause to be maintained, with financially sound and reputable insurance companies or associations satisfactory to Lender, all insurance required under the terms of the Insurance Agreement, and shall comply with each and every covenant and agreement contained in the Insurance Agreement.

(b) Renewal Policies. Not less than thirty (30) days prior to the expiration date of each insurance policy required pursuant to the Insurance Agreement, Borrower will deliver to Lender an appropriate renewal policy (or a certified copy thereof), together with evidence satisfactory to Lender that the applicable premium has been prepaid.

(c) Deposit for Premiums. On or before the date hereof, Borrower shall deposit with Lender an amount equal to 1/12th of the amount which Lender estimates will be required to make the next annual payments of the premiums for the policies of insurance referred to in this Section, multiplied by the number of whole and partial months which have elapsed since the date one month prior to the most recent policy anniversary date for each such policy. Thereafter, with each monthly payment under the Note, Borrower will deposit an amount equal to 1/12th of the amount which Lender estimates will be required to pay the next required annual premium for each insurance policy referred to in this Section. The purpose of these provisions is to provide Lender with sufficient funds on hand to pay all such premiums thirty (30) days before the date on which they become past due. If the Lender, in its reasonable discretion, determines that the funds impounded hereunder are, or will be, insufficient, Borrower shall upon demand pay such additional sums as Lender shall determine necessary and shall pay any increased monthly charges requested by Lender. Provided no Default or Event of Default exists hereunder, Lender will apply the amounts so deposited to the payment of such insurance premiums when due, but in no event will Lender be liable for any interest on any amounts so deposited, and the money so received may be held and commingled with Lender's own funds.

(d) Application of Hazard Insurance Proceeds. Borrower shall promptly notify Lender of any damage or casualty to all or any portion of the Property or Chattels. Lender may participate in all negotiations and appear and participate in all judicial arbitration proceedings concerning any insurance proceeds which may be payable as a result of such casualty or damage, and may, in Lender's sole discretion, compromise or settle, in the name of Lender, Borrower, or both any claim for any such insurance proceeds. Any such insurance proceeds shall be paid to Lender and shall be applied first to reimburse Lender for all costs and expenses, including attorneys' fees, incurred by Lender in connection with the collection of such insurance proceeds. The balance of any insurance proceeds received by Lender with respect to an insured casualty may, in Lender's sole discretion, either (i) be retained and applied by Lender toward payment of the Secured Obligations, or (ii) be paid over, in whole or in part and subject to such conditions as Lender may impose, to Borrower to pay for repairs or replacements necessitated by the casualty; provided, however, 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 Borrower. Notwithstanding the preceding sentence, if (A) no Default or Event of Default shall exist hereunder, and (B) the proceeds received by Lender (together with any other funds delivered by Borrower to Lender for such purpose) shall be sufficient, in Lender's reasonable judgment, to pay for any restoration necessitated by the casualty, and (C) the cost of such restoration shall not exceed \$2,500,000.00, and (D) such restoration can be completed, in Lender's judgment, at least ninety (90) days prior to the maturity date of the Note, then Lender shall apply such proceeds as provided in clause (ii) of the preceding sentence. Lender will have no obligation to see to the proper application of any insurance proceeds paid over to Borrower, nor will any such proceeds received by Lender bear interest or be subject to any other charge for the benefit of Borrower. Lender may, prior to the application of insurance proceeds, commingle them with

Lender's own funds and otherwise act with regard to such proceeds as Lender may determine in Lender's sole discretion.

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

4.6 Maintenance and Repair of Property and Chattels. Borrower 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 Borrower whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Borrower 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 but not limited to any environmental or ecological requirements; provided, that so long as Borrower is not otherwise in default hereunder, Borrower may, upon providing Lender with security reasonably satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, or requirement. Lender and any person authorized by Lender may enter and inspect the Property at all reasonable times, and may inspect the Chattels, wherever located, at all reasonable times.

4.7 Leases. Borrower shall timely pay and perform each of its obligations under or in connection with the Leases, and shall otherwise pay such sums and take such action as shall be necessary or required in order to maintain each of the Leases in full force and effect in accordance with its terms. If Borrower receives within any three (3) month period written communications from tenants under Leases covering, in the aggregate, ten percent (10%) or more of the rental units at the Property asserting a breach or default by Borrower under any Lease, or purporting to terminate or cancel any Lease prior to its stated expiration date, or requiring or demanding the expenditure of any sum by Borrower (or demanding the taking of any action by Borrower), Borrower will promptly forward a copy of such communications, and any subsequent communications relating to the Leases to Lender. Borrower agrees that Lender, in its sole discretion, may advance any sum or take any action which Lender believes is necessary or required to maintain the Leases in full force and effect, and all such sums advanced by Lender, together with all costs and expenses incurred by Lender in connection with action taken by Lender pursuant to this Section, shall be due and payable by Borrower to Lender upon demand, shall bear interest until paid at the Default Rate (as defined in the Note), and shall be secured by this Deed of Trust.

4.8 Eminent Domain; Private Damage. If all or any part of the Property is taken or damaged by eminent domain or any other public or private action, Borrower will notify Lender promptly of the time and place of all meetings, hearings, trials, and other proceedings relating to such action. Lender 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 taking or damage, and may, in Lender's reasonable discretion, compromise or settle, in the names of both Borrower and Lender, any claim for any such award or payment. Any such award or payment is to be paid to Lender and will be applied first to reimburse Lender for all costs and

expenses, including attorneys' fees, incurred by Lender in connection with the ascertainment and collection of such award or payment. The balance, if any, of such award or payment may, in Lender's reasonable discretion, either (a) be retained by Lender and applied toward the Secured Obligations, or (b) be paid over, in whole or in part and subject to such conditions as Lender may reasonably impose, to Borrower for the purpose of restoring, repairing, or rebuilding any part of the Property affected by the taking or damage. Notwithstanding the preceding sentence, if (i) no Default or Event of Default shall have occurred and be continuing hereunder, and (ii) the proceeds received by Lender (together with any other funds delivered by Borrower to Lender for such purpose) shall be sufficient, in Lender's reasonable judgment, to pay for any restoration necessitated by the taking or damage, and (iii) the cost of such restoration shall not exceed \$2,500,000.00, and (iv) such restoration can be completed, in Lender's judgment, at least ninety (90) days prior to the maturity date of the Note, and (v) the remaining Property after such restoration shall constitute, in Lender's sole judgment, adequate security for the Secured Obligations, then Lender shall apply such proceeds as provided in clause (b) of the preceding sentence. Borrower's duty to pay the Note 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 Lender's application of any such award or payment will take effect only when Lender receives such award or payment. If this Deed of Trust has been foreclosed prior to Lender's receipt of such award or payment, Lender may nonetheless retain such award or payment to the extent required to reimburse Lender for all costs and expenses, including attorneys' fees, incurred in connection therewith, and to discharge any deficiency remaining with respect to the Secured Obligations, with any excess being delivered to Borrower.

4.9 Mechanics' Liens. Borrower 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, Borrower will not be deemed to be in default under this Section if and so long as Borrower (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 Lender with such security as Lender may require to protect Lender against all loss, damage, and expense, including attorneys' fees, which Lender might incur if the asserted lien is determined to be valid.

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

4.11 Expenses of Enforcement. Borrower will pay all costs and expenses, including attorneys' fees, which Lender may incur in connection with any effort or action (whether or not litigation or foreclosure is involved) to enforce or defend Lender's rights and remedies under any of the Loan Documents, including but not limited to all attorneys' fees, appraisal fees, consultants' fees, and other expenses incurred by Lender in securing title to or possession of, and realizing upon, any security for the Secured Obligations. All such costs and expenses (together with interest

thereon at the Default Rate from the date incurred) shall constitute part of the Secured Obligations, and may be included in the computation of the amount owed to Lender for purposes of foreclosing or otherwise enforcing this Deed of Trust.

4.12 Financial Reports. During the term of the Loan, Borrower shall supply to Lender and Lender's loan servicer (a) within fifteen (15) days following the end of each calendar quarter, Borrower's quarterly operating statements for the Property as of the end of and for the preceding quarter, and, within thirty (30) days following the end of each calendar year, annual operating statements for the Property for the preceding calendar year, in each case, prepared against the budget for such year; (b) contemporaneously with Borrower's delivery of each of such operating statements, a certified rent roll signed and dated by Borrower detailing the names of all tenants under the Leases, the portion of the improvements on the Property occupied by each tenant, the rent and any other charges payable under each Lease, and the term of each Lease, and a leasing activity report for the preceding quarter; and (c) within thirty (30) days following the end of each year, an annual balance sheet and profit and loss statement of Borrower and each Guarantor. The financial statements and reports described in (a) and (c) above shall be in such detail as Lender may reasonably require, shall be prepared in accordance with generally accepted accounting principles consistently applied (with respect to entities) or such other accounting method as may be acceptable to Lender (with respect to individuals), and shall be certified as true and correct by Borrower or the applicable Guarantor, and the annual balance sheet of Borrower and each Guarantor shall have been audited by a certified public accountant (or if such audit has not been completed by the due date for such report, Borrower shall provide the unaudited, but certified, copy of the annual balance sheet prior to the due date and provide the audited annual balance sheets within sixty (60) days thereafter. Within thirty (30) days after Lender's request, Borrower shall deliver to Lender and Lender's loan servicer any other financial reports or statements of Borrower as Lender may reasonably request. Upon Lender's demand after any Default or Event of Default, or if Lender securitizes the Loan, Borrower shall supply to Lender and Lender's loan servicer the items required in (a) and (b) above on a monthly basis. Additionally, upon Lender's demand, if Lender intends to securitize the Loan and until the Loan is contributed to the securitization structure, Borrower shall supply to Lender the items required in (a) and (b) above on a monthly basis.

4.13 Intentionally Deleted.

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

4.15 Compliance with Laws, Etc. Borrower shall comply in all material respects with all applicable state, federal and other laws, rules, regulations and orders, such compliance to include, without limitation, maintaining all Permits and paying before the same become delinquent all taxes, assessments and governmental charges imposed upon Borrower or the Property.

4.16 Records and Books of Account. Borrower shall keep accurate and complete records and books of account, in which complete entries will be made in accordance with generally

accepted accounting principles consistently applied, reflecting all financial transactions relating to the Property.

4.17 Inspection Rights. At any reasonable time, and from time to time, Borrower shall permit Lender, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the Property and to discuss with Borrower the affairs, finances and accounts of Borrower.

4.18 Change of Borrower's Address or State of Organization. Borrower shall promptly notify Lender if changes are made in Borrower's address from that set forth in Section 9.10 hereof, or if Borrower shall either change its "location" (as such term is used in Section 5.8 hereof), its state of organization or if Borrower shall organize in any state other than the State of Utah.

4.19 Further Assurances; Estoppel Certificates. Borrower will execute and deliver to Lender upon demand, and pay the costs of preparation and recording thereof, any further documents which Lender 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. Borrower will also, within ten days after any request by Lender, deliver to Lender a signed and acknowledged statement certifying to Lender, or to any proposed transferee of the Secured Obligations, (a) the balance of principal, interest, and other sums then outstanding under the Note, and (b) whether Borrower claims to have any offsets or defenses with respect to the Secured Obligations and, if so, the nature of such offsets or defenses.

4.20 Costs of Closing. Borrower shall on demand pay directly or reimburse Lender for any costs or expenses pertaining to the closing of the Loan, including, but not limited to, fees of counsel for Lender, costs and expenses for which invoices were not available at the closing of the Loan, or costs and expenses which are incurred by Lender after such closing, including, without limitation, costs or expenses incurred to obtain originals or copies of recorded or filed Loan Documents and UCC financing statements. All such costs and expenses (together with interest thereon at the Default Rate from the date incurred by Lender) shall constitute a part of the Secured Obligations, and may be included in the computation of the amount owed to Lender for purposes of foreclosing or otherwise enforcing this Deed of Trust.

4.21 Fund for Electronic Transfer. All monthly payments of principal and interest on the Note, and impound deposits under this Deed of Trust, shall be made by Borrower by electronic funds transfer from a bank account established and maintained by Borrower for such purpose. Borrower shall establish and maintain such an account until the Note is fully paid and shall direct the depository of such account in writing to so transmit such payments on or before the respective due dates to the account of Lender as shall be designated by Lender in writing.

4.22 Use. Borrower shall use the Property solely for the operation of a multi-family apartment project, and for no other use or purpose.

4.23 Management. The Property shall be managed by GREP SOUTHWEST, LLC, a Delaware limited liability company ("Property Manager"), under a management agreement previously delivered to, and approved, by Lender (the "Management Agreement"). Borrower

shall not permit any amendment to or modification of the Management Agreement, or management of the Property by any person or entity other than Property Manager, without the prior written consent of Lender not to be unreasonably withheld.

4.24 Guarantor. Within thirty (30) days after the death of an individual Guarantor, Borrower shall notify Lender in writing of such death and provide to Lender the names and current financial statements of one or more substitute guarantors reasonably acceptable to Lender (a) (i) whose net worth and financial condition is, in Lender's reasonable discretion, equivalent to or better than the deceased Guarantor, or (ii) who are the heirs, devisees and beneficiaries of substantially all of the deceased Guarantor's assets, and (b) (i) whose net worth equals or exceeds the minimum net worth required under the Guaranty Agreement, when added to the net worth of the remaining persons and/or entities comprising Guarantor, and (ii) whose net worth includes cash and cash equivalents that equals or exceeds the minimum liquid assets required under the Guaranty Agreement, when added to the amount of cash and cash equivalents owned by the remaining persons and/or entities comprising Guarantor. Within ninety (90) days after the death of the individual Guarantor, each substitute guarantor(s) shall (A) deliver to Lender the financial reports and statements required in Section 4.12 hereof and Section 13 of the Guaranty Agreement and (B) execute and deliver to Lender a guaranty agreement and environmental indemnity agreement in substantially the same form as the Guaranty Agreement and Environmental Indemnity Agreement and such other instruments as Lender may reasonably require.

4.25 General Indemnity. Borrower agrees that while Lender has no liability to any person in tort or otherwise as lender and that Lender is not an owner or operator of the Property, Borrower shall, at its sole expense, protect, defend, release, indemnify and hold harmless the Indemnified Parties (defined below) from any Losses (defined below) imposed on, incurred by, or asserted against the Indemnified Parties, directly or indirectly, arising out of or in connection with the Property, Loan, or Loan Documents; provided, however, that the foregoing shall not apply (a) to any Losses caused by the gross negligence or willful misconduct of the Indemnified Parties or (b) provided no Event of Default then exists, to any disputes among the Indemnified Parties not caused in whole or in part by a breach of Borrower's obligations under the Loan Documents. The term "Losses" shall mean any claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses (including, without limitation, unrealized loss of value of the Property), costs, expenses, fines, penalties, charges, fees, judgments, awards, and amounts paid in settlement of whatever kind including attorneys' fees and all other costs of defense, including fees and disbursements incurred on appeal. The term "Indemnified Parties" shall mean (i) Lender, (ii) any prior owner or holder of the Note, (iii) any existing or prior servicer of the Loan, (iv) Trustee, (v) the officers, directors, shareholders, partners, members, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing. THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO LOSSES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY.

4.26 Duty to Defend, Costs and Expenses. Upon request, whether Borrower's obligation to indemnify Lender arises under Section 4.25 above or elsewhere in the Loan Documents, Borrower shall defend the Indemnified Parties (in Borrower's or the Indemnified Parties' names) by attorneys and other professionals approved by the Indemnified Parties.

Notwithstanding the foregoing, the Indemnified Parties may, in their sole discretion, engage their own attorneys and professionals to defend or assist them and, at their option, their attorneys shall control the resolution of any claims or proceedings. Upon demand, Borrower shall pay or, in the sole discretion of the Indemnified Parties, reimburse the Indemnified Parties for all Losses imposed on, incurred by, or asserted against the Indemnified Parties by reason of any items set forth in Section 4.25 above and/or the enforcement or preservation of the Indemnified Parties' rights under the Loan Documents. Any amount payable to the Indemnified Parties under this Section shall (a) be deemed a demand obligation, (b) be part of the Secured Obligations, (c) bear interest from the date of demand at the Default Rate until paid if not paid on demand, and (d) be secured by this Deed of Trust.

4.27 Actions by Lender. If Borrower shall fail to make any payment or perform any covenant as and in the manner provided in any of the Loan Documents, so long as such failure continues, Lender in its sole discretion, without obligation to do so and without notice to or demand upon Borrower and without releasing Borrower from any obligation, may make or perform the same in such a manner and to such extent as it may deem necessary to protect the security hereof. Lender shall be permitted to pay all reasonable expenses incurred in connection therewith, including, without limitation, employment of counsel and other consultants, engineers, contractors, appraisers, surveyors, and other professionals. Borrower shall, upon demand by Lender, pay all reasonable costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing rights, together with interest thereon at the Default Rate from the date incurred by Lender.

4.28 Single Purpose Entity. Borrower shall be a single purpose, bankruptcy remote entity, exclusively formed for owning and operating the Property. Borrower's form, structure and organizational documents shall be acceptable to Lender in its sole discretion. Borrower's organizational documents shall contain representations, warranties and covenants of Borrower (collectively, the "**Special Purpose Entity Requirements**"), in form and content required by Lender, which shall require that Borrower:

- (a) be formed or organized solely for the purpose of holding, directly, an ownership interest in the Property, or any portion thereof;
- (b) not engage in any business other than the ownership, management and operation of the Property;
- (c) not have any (i) assets other than those related to its interest in the Property or (ii) indebtedness other than the Secured Obligations and any unsecured indebtedness in respect of trade payables incurred in the ordinary course of business relating to the ownership, maintenance and operation of the Property (the "**Permitted Indebtedness**");
- (d) not guarantee or otherwise become liable on, or in connection with, any obligation of any other person (or acquire obligations or securities of its affiliates);

- (e) not enter into any contract or agreement with any affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than an affiliate;
- (f) not incur, create or assume any indebtedness (except for the Secured Obligations and any Permitted Indebtedness);
- (g) not make any loans or advances to any other person (including any affiliate);
- (h) not become insolvent or fail to pay its debts as the same become due (provided that nothing in this clause (h) shall require any owner or principal of Borrower or any other person to make any capital contribution or other contribution of cash or assets to Borrower);
- (i) not fail to conduct and operate its business in all material respects as presently conducted and operated;
- (j) not fail to maintain its books, records, bank accounts and financial statements separately from those of Borrower's affiliates, including its managers or members, as may be applicable;
- (k) not fail at all times to hold itself out to the public as a legal entity separate and apart from any other person (including any affiliate (including any stockholder, partner, member, trustee, beneficiary, or other owner of Borrower or any affiliate of any such stockholder, partner, member, trustee, beneficiary, or other owner));
- (l) not fail to file its own tax returns (except to the extent that Borrower is a disregarded entity and consolidates its tax returns with the tax returns of the applicable regarded entity);
- (m) not fail to maintain adequate capital for its normal obligations, reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided that nothing in this clause (m) shall require any owner or principal of Borrower or any other person to make any capital contribution or other contribution of cash or assets to Borrower);
- (n) not commingle its assets with any affiliate or any other person, and shall not otherwise fail to maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;
- (o) not hold itself out to be responsible for the indebtedness of any other person;
- (p) be subject to and comply with all of the limitations on powers set forth in the organizational documents of such Borrower (and the organizational

documents of each manager or managing member, as applicable, of such Borrower) as in effect on the date in this Agreement, and observe all applicable organizational formalities in all material respects;

- (q) hold all of its assets and conducts business in its own name;
- (r) utilize its own letterhead, invoices and checks;
- (s) hold title to its interest in the Property in its own name;
- (t) allocate fairly and reasonably any overhead expenses that are shared with any affiliate, including paying for office space and services performed by any employee of any affiliate;
- (u) not pledge its assets for the benefit of any other person (other than Lender);
- (v) correct any known misunderstandings regarding its separate identity;
- (w) have an operating or partnership agreement that provides that, until all of the Secured Obligations have been paid in full, Borrower shall not take or consent to any of the following actions: the dissolution, liquidation, consolidation, merger or sale of all or substantially all of Borrower's assets, or any division of Borrower into multiple entities or series pursuant to Utah law or otherwise.

ARTICLE 5 BORROWER'S NEGATIVE COVENANTS

5.1 Waste and Alterations. Borrower will not commit or permit any waste with respect to the Property or the Chattels. Borrower shall not cause or permit any part of the Property, including but not limited to 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 Lender.

5.2 Zoning and Private Covenants. Borrower 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 prior written consent of Lender. If under applicable zoning provisions the use of all or any part of the Property is or becomes a nonconforming use, Borrower will not cause such use to be discontinued or abandoned without the prior written consent of Lender, and Borrower will use its best efforts to prevent the tenant under any Lease from discontinuing or abandoning such use.

5.3 Interference with Leases.

(a) Borrower will neither do, nor neglect to do, anything which may cause or permit the termination of, or the withholding or abatement of rent payable under more than ten percent (10%) of the Leases affecting the Property.

(b) Without Lender's prior written consent, which may be granted or withheld in Lender's sole discretion, Borrower shall not enter into or modify any Lease of all or any part of the Property if such Lease or modification (i) provides for an original term of less than six (6) months from the original commencement date of such Lease, (ii) is not an arm's length transaction with a *bona fide* tenant, (iii) contains rental and other terms not consistent with those prevailing in the applicable market, or (iv) is on a lease form not theretofore approved by Lender.

(c) Except with the prior written consent of Lender, which may be granted or withheld in Lender's sole discretion, Borrower will not (i) collect rent from all or any part of the Property for more than one month in advance, (ii) assign the rents from the Property or any part thereof, or (iii) consent to the cancellation or surrender of all or any part of any Lease, except that Borrower may in good faith terminate any Lease for nonpayment of rent or other material breach by the tenant.

5.4 Transfer or Further Encumbrance of Property.

(a) Transfer or Further Encumbrance of Property – General Provision. Without Lender's prior written consent, which consent may be granted or withheld in Lender's sole and absolute discretion, Borrower shall not (i) directly or indirectly sell, assign, convey, transfer or otherwise dispose of the Property or any portion thereof or any direct or indirect legal, beneficial or equitable interest in all or any part of the Property, (ii) permit or suffer any owner, directly or indirectly, voluntarily or involuntarily, of any direct or indirect beneficial interest in the Property or Borrower to transfer such interest, whether by transfer of partnership, membership, stock or other beneficial interest in any entity or otherwise, or (iii) mortgage, pledge, hypothecate or otherwise encumber or permit or suffer to be encumbered or grant or permit to be granted a security interest in all or any part of, or any direct or indirect legal, beneficial or equitable interest in, the Property or Borrower.

(b) Permitted Transfer of Chattel and Personal Property. Notwithstanding the foregoing to the contrary, it shall not be a violation of the due on sale provisions of the Loan Documents if Borrower sells, transfers, or removes Chattels or other personal property from the Property in the ordinary course of operation and management of the Property as a prudent owner, operator and manager of similar properties would own, operate, and manage the Property, (i) if the same is contemporaneously replaced with similar items of equal or greater value and of similar utility or (ii) if such item is immaterial and obsolete, has no material value, or is non-essential and non-material to the use, management, and operation of the Property.

(c) Permitted Transfers of Direct or Indirect Ownership Interest in Borrower. Notwithstanding subsection 5.4(a) above to the contrary and provided that the Transfer Conditions, as defined below, are satisfied, the following transfers are permitted without Lender's prior written consent:

(i) Transfers (other than encumbrances) of direct and indirect ownership interests in Borrower to any Family Member, any Family Entity, or any entity wholly owned (directly or indirectly) by one or more Family Members or Family Entities and controlled by a Family Member, in each case made for bona fide estate planning purposes or by operation of law or testate succession (without consideration) upon the death of a Family Member; where (A) "**Family Member**" means any individual that owns a direct or indirect ownership interest in Borrower, and any of his or her spouses, descendants and spouses of such descendants, and (B) "**Family Entity**" means (1) any trust in which the beneficiary(ies) consist only of one or more Family Members ("**Family Trust**"), or (2) any corporation, partnership, limited liability company or other entity directly or indirectly controlled by a Family Member or Family Trust in which all of the issued and outstanding equity interests are owned through one or more intermediaries by one or more Family Members or Family Trusts, provided that the following conditions are satisfied: (I) no change of control occurs with respect to Borrower by reason of the proposed transfer, and (II) after the proposed transfer, each Guarantor continues to own no less than a 1% direct or indirect ownership interest in Borrower;

(ii) Transfers (other than encumbrances) to any person or entity other than those specified in clause (i) above, in the aggregate over the term of the Loan, of up to 49% of the direct and indirect ownership interests in Borrower.

(A) **Transfer Conditions**" mean all of the following: (1) no default or Event of Default has occurred and is continuing, (2) after the proposed transfer, Guarantor continues to directly or indirectly control Borrower and own, directly or indirectly, at least 51% of the ownership interests in Borrower, (3) Borrower delivers to Lender at least 30 days' prior written notice of the proposed transfer, together with organizational charts illustrating the upstream ownership structure both before and after the proposed change in ownership (an "**Organizational Chart**"), which Organizational Chart shall set forth Borrower's direct and indirect upstream ownership, percentage interests held by each upstream entity or person and type of each such entity and specifically identify and highlight any party that would, as a result of the proposed transfer, hold 20% or more of the direct or indirect interests in Borrower or Guarantor if such party held less than 20% of such interests prior to giving effect to the proposed transfer, in which case Borrower shall provide Lender with such additional information as may be reasonably requested by Lender in order for Lender to determine that the condition set forth in clause (6) below has been satisfied, (4) within 10 days after the transfer has occurred, Borrower delivers to Lender a final Organizational Chart confirming the new ownership structure, (5) Borrower pays all costs, fees and expenses (including attorneys' fees) incurred by Lender in connection with reviewing the proposed transfer, whether or not the transfer is consummated, (6) the proposed transferee and its constituent members (x) are not then an OFAC Listed Person and are not in violation of or under investigation for possible violation of, nor previously violated, any Anti-Money Laundering Laws and otherwise comply with the representations and warranties contained in Section 13 of the application for the Loan and (y) if Lender requests, sign a certificate in form and substance satisfactory to Lender evidencing such compliance and identifying the transferees with

sufficient information to enable Lender to perform searches confirming the foregoing (except that identifying information need not be provided for any transfers made in the ordinary course of business over a national securities exchange), and (7) concurrently with delivery of the notice required in clause (3) above, Borrower pays to AIG Asset Management (U.S.), LLC (“**AIG Asset Management**”) an administrative review fee of \$7,500.00. For the avoidance of doubt, notwithstanding that such fee is paid to AIG Asset Management, no relationship shall be created between Borrower and AIG Asset Management, and AIG Asset Management shall owe no duties or obligations to Borrower.

(B) For purposes of this subsection 5.4(c), the term “**control**” or “**controlled**” means the power or authority, directly or indirectly through one or more intermediaries, through the ownership of voting securities, by contract or otherwise, to direct the management, activities and policies of such person or entity.

5.5 Further Encumbrance of Chattels. Borrower will neither create nor permit any lien, security interest or encumbrance against the Chattels or Intangible Personality or any part thereof or interest therein, other than the liens and security interests created by the Loan Documents, without the prior written consent of Lender, which may be withheld for any reason.

5.6 Assessments Against Property. Borrower will not, without the prior written approval of Lender, which may be withheld for any reason, consent to or allow 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 allow to occur 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, and this provision shall 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 Borrower 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 Lender’s express written consent, the rights of Lender 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 Lender 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 Transfer or Removal of Chattels. Borrower 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.

5.8 Change of Name, Organizational I.D. No. or Location. Borrower will not change its name or the name under which it does business (or adopt or begin doing business under any other name or assumed or trade name), change its organizational identification number, or change its location, without first notifying Lender of its intention to do so and delivering to Lender such organizational documents of Borrower and executed modifications or supplements to this Deed of Trust (and to any financing statement which may be filed in connection herewith) as

Lender may require. For purposes of the foregoing, Borrower's "location" shall mean (a) if Borrower is a registered organization, Borrower's state of registration, (b) if Borrower is an individual, the state of Borrower's principal residence, or (c) if Borrower is neither a registered organization nor an individual, the state in which Borrower's place of business (or, if Borrower has more than one place of business, the Borrower's chief executive office) is located.

5.9 Improper Use of Property or Chattels. Borrower will not use the Property or the Chattels 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.

5.10 ERISA. Borrower shall not engage in any transaction which would cause the Note (or the exercise by Lender of any of its rights under the Loan Documents) to be a non exempt, prohibited transaction under ERISA (including for this purpose the parallel provisions of Section 4975 of the Internal Revenue Code of 1986, as amended), or otherwise result in Lender being deemed in violation of any applicable provisions of ERISA. Borrower shall indemnify, protect, defend, and hold Lender harmless from and against any and all losses, liabilities, damages, claims, judgments, costs, and expenses (including, without limitation attorneys' fees and costs incurred in the investigation, defense, and settlement of claims and in obtaining any individual ERISA exemption or state administrative exception that may be required, in Lender's sole and absolute discretion) that Lender may incur, directly or indirectly, as the result of the breach by Borrower of any warranty or representation set forth in Section 3.3(x) hereof or the breach by Borrower of any covenant contained in this Section. This indemnity shall survive any termination, satisfaction or foreclosure of this Deed of Trust and shall not be subject to the limitation on personal liability described in the Note.

5.11 Use of Proceeds. Borrower will not use any funds advanced by Lender under the Loan Documents for household or agricultural purposes, to purchase margin stock, or for any purpose prohibited by law.

5.12 REA and Other Major Approvals. Without Lender's prior written consent, which may be granted or withheld in Lender's reasonable discretion, Borrower shall not enter into or modify any reciprocal easement agreement, declaration, covenant, condition or restriction, ground lease, any operating agreement, or any other document recorded against the Property.

ARTICLE 6 **EVENTS OF DEFAULT**

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

6.1 Failure to Pay Note. Borrower's failure to make any payment when due under the terms of the Note or any other Loan Document.

6.2 Due on Sale or Encumbrance. The occurrence of any violation of any covenant contained in Section 5.4 5.5 or 5.7 hereof.

6.3 Other Obligations. The failure of Borrower or Guarantor to properly perform any obligation contained herein or in any of the other Loan Documents (other than the obligation to make payments under the Note or the other Loan Documents or any other obligation or matter contemplated by this Article 6) and the continuance of such failure for a period of ten (10) days following written notice thereof from Lender to Borrower; provided, however, that if such failure is not curable within such ten (10) day period, then, so long as Borrower commences to cure such failure within such ten (10) 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 thirty (30) days after such written notice to Borrower.

6.4 Levy Against Property. The levy against any of the Property, Chattels or Intangible Personality, of any execution, attachment, sequestration or other writ.

6.5 Liquidation. The liquidation, termination or dissolution of Borrower or any Controlling Person.

6.6 Appointment of Receiver. The appointment of a trustee or receiver for the assets, or any part thereof, of Borrower, or any Controlling Person, 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 Secured Obligations.

6.7 Assignments. The making by Borrower or any Controlling Person of a transfer in fraud of creditors or an assignment for the benefit of creditors.

6.8 Order for Relief. The entry in bankruptcy of an order for relief for or against Borrower or any Controlling Person.

6.9 Bankruptcy. The filing of any petition (or answer admitting the material allegations of any petition), or other pleading, seeking entry of an order for relief for or against Borrower or any Controlling Person as a debtor or bankrupt or seeking an adjustment of any of such parties' debts, or any other relief under any state or federal bankruptcy, reorganization, debtor's relief or insolvency laws now or hereafter existing, including, without limitation, a petition or answer seeking reorganization or admitting the material allegations of a petition filed against any such party in any bankruptcy or reorganization proceeding, or the act of any of such parties in instituting or voluntarily being or becoming a party to any other judicial proceedings intended to effect a discharge of the debts of any such parties, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any of the rights or powers of a trustee or of any of the rights or powers granted to Lender herein, or in any other document executed in connection herewith.

6.10 Misrepresentation. If any representation or warranty made by Borrower or any Controlling Person in this Deed of Trust, any of the other Loan Documents, the application for the Loan made by or on behalf of Borrower or any other instrument or document modifying, renewing, extending, evidencing, securing or pertaining to the Note is false, misleading or erroneous in any material respect.

6.11 Judgments. The failure of Borrower or any Controlling Person to pay any money judgment in excess of \$10,000.00 against any such party before the expiration of thirty (30) days after such judgment becomes final and no longer appealable.

6.12 Admissions Regarding Debts. The admission of Borrower or any Controlling Person in writing of any such party's inability to pay such party's debts as they become due.

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

6.14 Other Loan Documents. The occurrence of any default by Borrower, after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any of the Loan Documents other than this Deed of Trust.

6.15 Other Liens. The occurrence of any default by Borrower, after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any other consensual lien encumbering the Property, or any part thereof or interest therein, or any document or instrument evidencing obligations secured thereby.

6.16 Other Indebtedness. The occurrence of any default by Borrower, after the lapse of any applicable grace or cure period, or the occurrence of any event or circumstance defined as an Event of Default, under any other indebtedness incurred or owing by Borrower, or any document or instrument evidencing any obligation to pay such indebtedness.

ARTICLE 7 LENDER'S REMEDIES

Immediately upon or any time after the occurrence of any Event of Default hereunder, Lender 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 Lender may determine in Lender's sole discretion. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees and costs of documentary evidence, abstracts, and title reports.

7.1 Performance of Defaulted Obligations. Lender may make any payment or perform any other obligation under the Loan Documents or under Leases which Borrower has failed to make or perform, and Borrower hereby irrevocably appoints Lender as the true and lawful attorney in fact for Borrower to make any such payment and perform any such obligation in the name of Borrower. All payments made and expenses (including attorneys' fees and expenses) incurred by Lender 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 Borrower to Lender. In lieu of advancing Lender's own funds for such purposes, Lender may use any funds of Borrower which may be in Lender's possession, including but not limited to 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, Lender will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Borrower to cure or refrain from repeating any Default.

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

7.4 Suit for Monetary Relief. Subject to the non recourse provisions of the Note and applicable law, with or without accelerating the maturity of the Secured Obligations, Lender may sue from time to time for any payment due under any of the Loan Documents, or for money damages resulting from Borrower's default under any of the Loan Documents.

7.5 Possession of Property. To the extent permitted by law, Lender 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 Lender's name or in the name of Borrower, and may collect the rents, issues, and profits of the Property. Any revenues collected by Lender under this Section will be applied first toward payment of all expenses (including attorneys' fees) incurred by Lender, 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 in such order and manner as Lender may elect in its sole discretion.

7.6 Enforcement of Security Interests. Lender may exercise all rights of a secured party under the Code with respect to the Chattels and the Intangible Personality, including but not limited to 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 Lender's giving of such notice to Borrower at least five 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.

(a) At Lender's option and in addition to any other remedy Lender may have under the Note or any other Loan Document or at law or in equity or by statute, Lender may declare all sums secured hereby immediately due and payable and elect to have the Property sold in the manner provided herein. In the event Lender elects to sell the Property, Lender may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Property is located.

(b) 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 Borrower, shall sell the Property on the date and at the time and place designated in the notice of sale, either as a whole or in separate parcels, and in such order as Lender may determine (and Borrower hereby waives the right, on its own behalf

and anyone claiming by, through or under Borrower, subject to any statutory right of Borrower, to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than forty five (45) days beyond the day designated in the notice of sale, notice of the time, date and place of sale shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (i) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's reasonable attorney's fees and costs; (ii) cost of any evidence of title procured in connection with such sale; (iii) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the Default Rate then provided for in the Note; (iv) all sums then secured by this Deed of Trust, including interest and principal on the Note; and (v) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Property is located.

(c) Borrower shall surrender possession of the Property to the purchaser immediately after the sale of the Property as provided in Section 7.7(b) above, in the event such possession has not previously been surrendered by Borrower.

(d) Lender 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 Lender 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.

(e) Nothing in this Section dealing with foreclosure procedures or specifying particular actions to be taken by Lender shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by the laws of the State, and any such inconsistency shall be resolved in favor of the State's law applicable at the time of foreclosure.

7.8 Appointment of Receiver. To the extent permitted by law, Lender 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. Borrower waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and its agents shall be empowered to (a) take possession of the Property and any businesses conducted by Borrower or any other person thereon and any business assets used in connection therewith, (b) exclude Borrower and Borrower's agents, servants, and employees from the Property, (c) collect the rents, issues, profits, and income therefrom, (d) complete any construction which may be in progress, (e) do such maintenance and make such repairs and alterations as the receiver deems necessary, (f) use all stores of materials, supplies, and maintenance equipment on the

Property and replace such items at the expense of the receivership estate, (g) 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 do anything which Borrower could legally do if Borrower were in possession of the Property. All expenses incurred by the receiver or its agents shall constitute a part of the Secured Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including attorneys' fees incurred by the receiver and by Lender, together with interest thereon at the Default Rate from the date incurred until repaid, and the balance shall be applied toward the Secured Obligations in such order or manner as Lender may in its sole discretion elect or in such other manner as the court may direct. Unless sooner terminated with the express consent of Lender, 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 and all applicable periods of redemption have expired.

7.9 Right to Make Repairs, Improvements. Should any part of the Property come into the possession of Lender, whether before or after an Event of Default, Lender may use, operate, and/or make repairs, alterations, additions and improvements to the Property for the purpose of preserving it or its value. Borrower covenants to promptly reimburse and pay to Lender, at the place where the Note is payable, or at such other place as may be designated by Lender in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes, or other charges) incurred by Lender in connection with its custody, preservation, use or operation of the Property, together with interest thereon from the date incurred by Lender 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 Borrower and Lender 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. Lender may surrender the insurance policies maintained pursuant to the terms hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Secured Obligations and, in connection therewith, Borrower hereby appoints Lender (or any officer of Lender), as the true and lawful agent and attorney in fact for Borrower (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.

7.11 Intentionally Deleted.

7.12 Collateral for Obligations. Borrower acknowledges that the Property is collateral for the full amount of the Secured Obligations. Neither Lender nor Borrower shall be required to marshal all or any part of the Property or proceed against all or any part of the Property in any particular sequence, and Lender shall not be limited in the amount it can recover from the Property to satisfy the Secured Obligations.

ARTICLE 8
ASSIGNMENT OF LEASES AND RENTS

8.1 Assignment of Leases and Rents. Borrower hereby unconditionally and absolutely grants, transfers and assigns unto Lender all rents, royalties, issues, profits and income (“Rents”) now or hereafter due or payable for the occupancy or use of the Property, and all Leases, whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the Property; reserving unto Borrower, however, a license to collect and retain such Rents prior to the occurrence of any Event of Default hereunder. Such license shall be revocable by Lender without notice to Borrower at any time after the occurrence of an Event of Default. Borrower represents that the Rents and the 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 Borrower or by any person or persons whomsoever; and Borrower has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interest, powers and authorities herein granted and conferred. Failure of Lender at any time or from time to time to enforce the assignment of Rents and Leases under this Section shall not in any manner prevent its subsequent enforcement, and Lender is not obligated to collect anything hereunder, but is accountable only for sums actually collected.

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

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

8.4 Collection of Rents. Upon or at any time after an Event of Default shall have occurred and be continuing, Lender 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, (a) 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); (b) make, cancel, enforce or modify Leases; (c) obtain and evict tenants; (d) fix or modify Rents; (e) do any acts which Lender deems reasonably proper to protect the security thereof; and (f) 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, Lender shall be entitled and empowered to employ attorneys, and management, rental and other agents in and about the Property and to effect the matters which Lender is empowered to do, and in the event Lender shall

itself effect such matters, Lender 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 Lender or such persons shall be additional Secured Obligations. Lender 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 Lender 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 Note or this Deed of Trust or invalidate any act done pursuant to such notice.

8.5 Authority of Lender. Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Lender hereunder without investigating the reason for any action taken by Lender, or the validity or the amount of indebtedness owing to Lender, or the existence of any default in the Note or this Deed of Trust, or under or by reason of this assignment of Rents and Leases, or the application to be made by Lender of any amounts to be paid to Lender. The sole signature of Lender shall be sufficient for the exercise of any rights under this assignment and the sole receipt of Lender 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 this assignment of Rents and Leases shall be drawn to the exclusive order of Lender.

8.6 Indemnification of Lender. Nothing herein contained shall be deemed to obligate Lender to perform or discharge any obligation, duty or liability of any lessor under any Lease of the Property, and Borrower shall and does hereby indemnify and hold Lender harmless from any and all liability, loss or damage which Lender may or might incur under any Lease of the Property or by reason of this assignment; and any and all such liability, loss or damage incurred by Lender, together with the costs and expenses, including reasonable attorneys' fees, incurred by Lender in defense of any claims or demands therefor (whether successful or not), shall be additional Secured Obligations, and Borrower shall reimburse Lender therefor on demand.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 Time of the Essence. Time is of the essence with respect to all of Borrower's obligations under the Loan Documents.

9.2 Joint and Several Obligations. If Borrower is more than one person or entity, then (a) all persons or entities comprising Borrower are jointly and severally liable for all of the Secured Obligations; (b) all representations, warranties, and covenants made by Borrower shall be deemed representations, warranties, and covenants of each of the persons or entities comprising Borrower; (c) any breach, Default or Event of Default by any persons or entities comprising Borrower hereunder shall be deemed to be a breach, Default or Event of Default of Borrower; (d) any reference herein contained to the knowledge or awareness of Borrower shall mean the knowledge or awareness of any of the persons or entities comprising Borrower; and (e) any event creating personal liability of any of the persons or entities comprising Borrower shall create personal liability for all such persons or entities.

9.3 Waiver of Homestead and Other Exemptions. To the extent permitted by law, Borrower hereby waives all rights to any homestead or other exemption to which Borrower would otherwise be entitled under any present or future constitutional, statutory, or other provision of applicable state or federal law. Borrower hereby waives any right it may have to require Lender to marshal all or any portion of the security for the Secured Obligations.

9.4 Non Recourse; Exceptions to Non Recourse. Except as expressly set forth in the Note, the recourse of Lender with respect to the obligations evidenced by the Note and the other Loan Documents shall be solely to the Property, Chattels and Intangible Personality, and any other collateral given as security for the Note.

9.5 Rights and Remedies Cumulative. Lender's rights and remedies under each of the Loan Documents are cumulative of the rights and remedies available to Lender under each of the other Loan Documents and those otherwise available to Lender at law or in equity. No act of Lender 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 Lender.

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

9.7 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 Lender are intended solely for the benefit of Lender, and no third party shall be entitled to assume or expect that Lender will waive or consent to modification of any such provision in Lender's sole discretion.

9.8 Preservation of Liability and Priority. Without affecting the liability of Borrower 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 Lender 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, Lender may, either before or after the maturity of the Note, 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 Lender 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

Personalty shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Lender.

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

9.10 Notices. Any notice required or permitted to be given by Borrower or Lender under this Deed of Trust shall be in writing and will be deemed given (a) upon personal delivery, (b) on the first business day after receipted delivery to a courier service which guarantees next business day delivery, or (c) on the third business day after mailing, by registered or certified United States mail, postage prepaid, in any case to the appropriate party at its address set forth below:

If to Borrower:

Bria Holdings, LLC
1798 West 5150 South, Suite 103
Roy, Utah 84067
Attention: Bryce Thurgood

If to Lender:

The Variable Annuity Life Insurance Company
c/o AIG Investments
777 S. Figueroa Street, 16th Floor
Los Angeles, California 90017 5800
Attention: VP, Servicing – Commercial Mortgage Lending

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

9.11 Defeasance. Upon payment and performance in full of all of the Secured Obligations, Lender will execute and deliver to Borrower such documents as may be required to release this Deed of Trust of record.

9.12 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.

9.13 Usury Savings Clause. It is expressly stipulated and agreed to be the intent of Lender and Borrower 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 Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Loan, or if acceleration of the maturity of the Note, any prepayment by Borrower, or any other circumstance whatsoever, results in Borrower having paid any interest in excess of that permitted by applicable law, then it is the express intent of Borrower and Lender that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note (or, at Lender's option, paid over to Borrower), and the provisions of the Note 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 Note does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Secured Obligations evidenced hereby or by the Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such Secured Obligations until payment in full so that the rate or amount of interest on account of such Secured Obligations 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.

9.14 Substitute or Successor Trustee. Trustee may resign by an instrument in writing addressed to Lender, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Lender. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Lender shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named Trustee or any substitute or successor trustee, then Lender shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Lender, and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Secured Obligations secured hereby have been paid in full or until the Property is sold hereunder. Such appointment and designation by Lender shall be full evidence of the right and authority to make the same and of all facts therein recited. If Lender is a corporation and such appointment is executed in its behalf by an officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee; but nevertheless, upon the written request of Lender or of the successor or substitute Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute Trustee all of the estate and title in the Property of the Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said Trustee hereunder to said successor or substitute Trustee. All references herein to Trustee shall be deemed to refer to the

trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Borrower hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

9.15 No Liability of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. All moneys received by Trustee, until used or applied as provided herein, shall be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee have no liability for interest on any moneys received by it hereunder. Borrower hereby ratifies and confirms any and all acts which the herein-named Trustee or its successor or successors, substitute or substitutes, in this trust, shall lawfully do by virtue hereof. Borrower shall reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses that Trustee may incur in the performance of its duties. The foregoing indemnity shall survive payment of the Secured Obligations and foreclosure, release or other termination of this Deed of Trust.

9.16 Obligations Binding Upon Borrower's Successors. This Deed of Trust is binding upon Borrower and Borrower's successors and assigns, and shall inure to the benefit of Lender, 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 Borrower in this Deed of Trust shall be joint and several obligations of Borrower and Borrower's successors and assigns.

9.17 Construction. All pronouns and any variations of pronouns herein shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the parties may require. Whenever the terms herein are singular, the same shall be deemed to mean the plural, as the identity of the parties or the context requires.

9.18 Attorneys' Fees. Any reference in this Deed of Trust to attorneys' or counsel's fees paid or incurred by Lender shall be deemed to include paralegals' fees and legal assistants' fees. Moreover, wherever provision is made herein for payment of attorneys' or counsel's fees or expenses incurred by Lender, such provision shall include but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced, during such proceedings or after entry of a final judgment.

9.19 Waiver and Agreement. BORROWER HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE UNDER APPLICABLE LAW TO PREPAY THE NOTE, IN WHOLE OR IN PART, WITHOUT PREPAYMENT CHARGE, UPON ACCELERATION OF THE MATURITY DATE OF THE NOTE, AND AGREES THAT, IF FOR ANY REASON A PREPAYMENT OF ALL OR ANY PART OF THE NOTE IS MADE, WHETHER VOLUNTARILY OR FOLLOWING ANY ACCELERATION OF THE MATURITY DATE OF THE NOTE BY LENDER ON ACCOUNT OF THE OCCURRENCE OF ANY EVENT OF DEFAULT ARISING FOR ANY REASON, INCLUDING, WITHOUT LIMITATION, AS A

RESULT OF ANY PROHIBITED OR RESTRICTED TRANSFER, FURTHER ENCUMBRANCE OR DISPOSITION OF THE PROPERTY OR ANY PART THEREOF SECURING THE NOTE, THEN BORROWER SHALL BE OBLIGATED TO PAY, CONCURRENTLY WITH SUCH PREPAYMENT, THE PREPAYMENT PREMIUM PROVIDED FOR IN THE NOTE (OR, IN THE EVENT OF ACCELERATION WHEN THE NOTE IS CLOSED TO PREPAYMENT, AS PROVIDED IN THE DEFINITION OF "SECURED OBLIGATIONS" SET FORTH IN ARTICLE 1) AND ANY AND ALL OTHER CHARGES AND FEES DUE UNDER THE LOAN DOCUMENTS. BORROWER HEREBY DECLARES THAT LENDER'S AGREEMENT TO MAKE THE LOAN AT THE INTEREST RATE AND FOR THE TERM SET FORTH IN THE NOTE CONSTITUTES ADEQUATE CONSIDERATION, GIVEN INDIVIDUAL WEIGHT BY BORROWER, FOR THIS WAIVER AND AGREEMENT.

9.20 Waiver of Jury Trial. LENDER AND BORROWER KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS DEED OF TRUST, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DEED OF TRUST OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER AND BORROWER TO ENTER INTO THE LOAN.

9.21 Governing Laws. The substantive laws of the State shall govern the validity, construction, enforcement, and interpretation of this Deed of Trust.

9.22 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the Loan and supersede all prior agreements, understandings or negotiations with respect thereto, whether written or oral.

9.23 Economic Sanctions, Anti Money Laundering, Etc. Borrower represents, warrants and covenants to Lender that:

(a) None of the Borrower, the Guarantor, or any officer or director of any of them, is or shall become a Prohibited Person or is or shall become directly or indirectly owned or controlled by any Prohibited Person,

(b) At all times throughout the Loan term, none of the funds of Borrower, Guarantor or any other party that are used to repay the Loan shall be derived from (i) conducting business or transacting with any Prohibited Person, or (ii) activities involving the violation of any Anti Money Laundering Laws,

(c) None of the proceeds of the Loan shall be used to facilitate any business, transactions, or other activity with any Prohibited Person or activities involving the violation of any Anti Money Laundering Laws, and

(d) Borrower shall promptly deliver to Lender any certification or other evidence reasonably requested from time to time by Lender confirming Borrower's compliance

with this Section. The representations, warranties and covenants set forth in this Section shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Lender under the Note, this Deed of Trust and the other Loan Documents or receives any payment from Lender. Borrower shall promptly notify Lender in writing should Borrower become aware of any change in the information set forth in these representations, warranties and covenants.

(e) For the purposes of this Section:

(i) **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

(ii) **“Governmental Authority”** means (1) the government of (A) the United States of America or any state or other political subdivision thereof, or (B) any other jurisdiction in which the Borrower, Guarantor or their direct or indirect constituents (as applicable) conducts all or any part of its business, or which asserts jurisdiction over any properties of any of the foregoing, or (2) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

(iii) **“Person”** means an individual, a corporation, an association, a joint stock company, a trust, a business trust, a partnership, a joint venture, a limited liability company, a real estate investment trust, an unincorporated organization, department, or a government, foreign country or regime (or any agency, agent, instrumentality or political subdivision thereof), or any other entity (whether incorporated or unincorporated).

(iv) **“Prohibited Person”** means:

(A) any Person that is identified on the list of Specially Designated Nationals and Blocked Persons, the list of Foreign Sanctions Evaders, or the Sectoral Sanctions Identification List (an **“OFAC Listed Person”**), each published by the United States Department of the Treasury’s Office of Foreign Assets Control (**“OFAC”**),

(B) any agent, department, or instrumentality of, or any Person otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, (A) any OFAC Listed Person or (B) any Person that is the target of any sanctions programs administered and/or enforced by OFAC,

(C) any Person that is otherwise blocked by or a target of United States economic sanctions,

(D) any Person that (1) has been found in violation of, charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes under the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the USA PATRIOT Act or any other United States law or regulation governing such activities (collectively, **“Anti Money Laundering Laws”**) or any U.S. economic sanctions violations, (2) is under investigation by any Governmental

Authority for possible violation of Anti Money Laundering Laws or any U.S. economic sanctions violations, (3) has been assessed civil penalties under any Anti Money Laundering Laws or any U.S. economic sanctions, or (4) has had any of its funds seized or forfeited in an action under any Anti Money Laundering Laws,

(E) any Person that (1) is owned or controlled by the government of any country or territory that is subject to comprehensive U.S. sanctions (the “**Sanctioned Countries**”) (e.g. Cuba, Iran, Sudan, North Korea, Syria, Venezuela or the Crimea region of Russia or Ukraine), (2) is located in any Sanctioned Countries, or (3) does business in or with any Sanctioned Countries.

Notwithstanding the foregoing, with respect to any direct or indirect constituent of Borrower or Guarantor that is not a U.S. Person, such non-U.S. Person shall not be required to comply with any of the provisions in this Section if doing so would constitute a violation of the domiciliary law applicable to such non-U.S. Person; provided, however, that if such non-U.S. Person is not required to comply with the provisions of this Section, Borrower shall deliver written notice to Lender, which written notice shall include, among other things, (x) the identity of such non-U.S. Person, (y) the justification for such non-U.S. Person’s non-compliance, and (z) such other written evidence reasonably required by Lender confirming the same.

9.24 Claims Against Lender. Lender shall not be in default or breach under this Deed of Trust, or under any of the other Loan Documents, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within three (3) months after Borrower first had knowledge of the occurrence of the event that Borrower alleges gave rise to such claim and Lender does not remedy or cure the default or breach, if any there be, promptly thereafter. Borrower waives any claim, set off or defense against Lender arising by reason of any alleged default or breach by Lender as to which Borrower does not give such notice timely as aforesaid. Borrower acknowledges that such waiver is or may be essential to Lender’s ability to enforce Lender’s remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Lender and Borrower with respect to the Loan.

9.25 Sale of Loan and Securitization; Future Loan Modification. Lender shall have the right, from time-to-time, to (a) sell, assign or transfer all or any portion of the Loan or any interest in the Loan, including participation interests in all or any portion of the Loan and (b) modify, split and/or sever any portion of the Loan (any such modification, split or severance of all or any portion of the Loan, a “**Loan Modification**”). Borrower shall cooperate, and cause Guarantor and each of the Controlling Persons to cooperate, with Lender to effectuate such Loan Modification and shall execute, acknowledge and deliver such documents as Lender may reasonably request to evidence such Loan Modification. Upon the election of Lender at any time to effectuate a Loan Modification, Lender may (i) cause the Note and this Deed of Trust and any of the other Loan Documents evidencing and securing the Loan to be split into two or more additional tranches of notes (i.e., an A-1/A-2 structure), (ii) create two or more senior and subordinate notes (i.e., an A/B or A/B/C structure), (iii) create multiple components of the Note or notes, and/or (iv) otherwise split or sever the Loan and the Note into two or more loans and notes secured by a deed of trust and, in each such case, allocate or reallocate the principal balance of the Loan and the Note among such split, severed or component loans and notes in whatever proportion and whatever priority Lender determines; provided, however, that, in each such instance,

immediately after the effective date of such Loan Modification (A) the outstanding principal balance of the Note or notes evidencing the Loan (or split, severed or component notes evidencing the Loan) equals the outstanding principal balance immediately prior to such Loan Modification, (B) the weighted average of the interest rates for the Note or notes evidencing the Loan (or split, severed or component notes evidencing the Loan) equals the interest rate of the Note immediately prior to such Loan Modification, and (C) there shall be no change to (x) the economic terms of the Loan Documents or (y) to the rights or obligations of Borrower or Guarantor (other than de minimis changes to reflect the revised structure of the Loan and the Note). Notwithstanding anything set forth herein to the contrary, and without limiting the generality of the foregoing, Lender shall have the right to securitize the Loan (or any portion thereof or interest therein) in a commercial mortgage backed securitization or any other public offering or private placement ("Securitization"), and Borrower shall reasonably cooperate with Lender in effecting any such Securitization (without cost or expense to Borrower, other than Borrower's attorneys' fees). Borrower authorizes Lender to disclose to any actual or prospective participant or transferee of the Loan (or any investor in such securities issued in connection with a Securitization or any rating agency rating such securities) any and all financial and other information then in Lender's possession concerning the Property, the Controlling Persons and their respective affiliates, or the Loan. If requested by Lender, whether prior to, on or following the closing date of the Loan, Borrower shall assist Lender in satisfying the market standards to which Lender customarily adheres or which may be reasonably required in the marketplace or by any rating agency to be included in any loan documentation and/or disclosure documentation or otherwise in connection with any such Securitization.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Deed of Trust as of the date first mentioned above.

BORROWER:

BRIA HOLDINGS, LLC, a Utah limited liability company

By: Mike Schultz, Inc., a Utah corporation, its manager

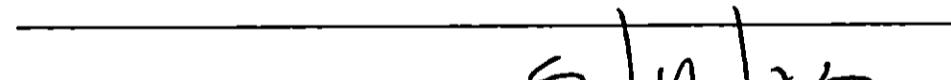
By:
Name: Mike Schultz
Title: President

STATE OF UTAH)
COUNTY OF Davis) ss.
)

The foregoing instrument was acknowledged before me this 20 day of OCTOBER 2020, by Mike Schultz, as President of Mike Schultz, Inc., a Utah corporation, manager of BRIA HOLDINGS, LLC, a Utah limited liability company.


NOTARY PUBLIC

Residing at: Logan UT


My commission expires: 5/1/25

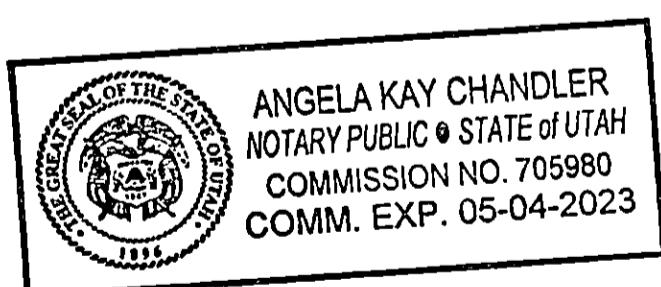


EXHIBIT A
to
DEED OF TRUST

(Legal Description)

PART OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF 4000 SOUTH STREET, SAID POINT BEING N89°23'52"W 1224.78 FEET AND N00°36'08"E 54.28 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 3; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 9359.00 FEET, AN ARC LENGTH OF 417.17 FEET, A DELTA ANGLE OF 02°33'14", A CHORD BEARING OF S89°41'59"W, AND A CHORD LENGTH OF 417.14 FEET TO THE EASTERLY LINE OF ELLIES LANDING TOWNHOMES; THENCE N00°39'09"E ALONG SAID EASTERLY LINE, 668.53 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF 3800 SOUTH STREET; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING FIVE (5) COURSES: (1) S89°23'54"E 18.79 FEET; (2) ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 279.50 FEET, AN ARC LENGTH OF 95.61 FEET, A DELTA ANGLE OF 19°35'55", A CHORD BEARING OF N80°48'08"E, AND A CHORD LENGTH OF 95.14 FEET; (3) N71°00'11"E 35.74 FEET; (4) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 220.50 FEET, AN ARC LENGTH OF 73.10 FEET, A DELTA ANGLE OF 18°59'45", A CHORD BEARING OF N80°30'05"E, AND A CHORD LENGTH OF 72.77 FEET; AND (5) EAST 429.60 FEET; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 19.00 FEET, AN ARC LENGTH OF 29.85 FEET, A DELTA ANGLE OF 89°59'59", A CHORD BEARING OF S45°00'00"E, AND A CHORD LENGTH OF 26.87 FEET; THENCE ALONG THE WESTERLY RIGHT OF WAY LINE OF 3375 WEST STREET THE FOLLOWING SIX (6) COURSES: (1) SOUTH 122.59 FEET; (2) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 215.49 FEET, AN ARC LENGTH OF 185.96 FEET, A DELTA ANGLE OF 49°26'36", A CHORD BEARING OF S24°43'14"W, AND A CHORD LENGTH OF 180.24 FEET; (3) S49°26'28"W 83.93 FEET; (4) ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 284.50 FEET, AN ARC LENGTH OF 244.67 FEET, A DELTA ANGLE OF 49°16'28", A CHORD BEARING OF S24°48'15"W, AND A CHORD LENGTH OF 237.20 FEET; (5) S00°10'02"W 89.55 FEET; AND (6) S13°38'50"E 17.16 FEET; THENCE S43°43'00"W 32.54 FEET TO THE POINT OF BEGINNING.

CONTAINING 383,301 SQUARE FEET OR 8.799 ACRES MORE OR LESS.