

Entry 2019008385  
Book 1634 Pages 341-353 \$40.00  
30-Dec-19 12:31  
BRENDA MCDONALD  
RECORDER, UINTAH COUNTY, UTAH  
FIRST AMERICAN TITLE INSURANCE COMPANY - NCS SALT LAKE  
215 SOUTH STATE STREET, SUITE 380, SALT LAKE CITY, UTAH 84111  
Rec By: Chery Bolton, Deputy Recorder  
Electronic Recording

Tax Serial Number: 05:052:0203 and 04:126:0055

Ent 2019008385  
Book 1634 Pg 341

**WHEN RECORDED MAIL TO:**

Goldman Sachs Bank USA,  
a New York chartered bank  
c/o Genesis Capital, LLC  
ATTENTION: LENDING DEPARTMENT  
15303 Ventura Boulevard, Suite 700,  
Sherman Oaks, CA 91403

First American Title  
National Commercial Services  
NCS File # 968806

FOR RECORDER'S USE ONLY

Loan No.: G19120671

**DEED OF TRUST**

**MAXIMUM LIEN.** The lien of this Deed of Trust shall not exceed at any one time \$9,094,400.00.

**THIS DEED OF TRUST is dated 12/27/2019, by VERNAL VENTURES LLC, a Florida limited liability company, whose address is 701 West Broad Street, Bethlehem, Pennsylvania 18018 and Cassidy Property Management, LLC, a Pennsylvania limited liability company whose address is 2132 Sycamore Street, Bethlehem, Pennsylvania 18017 ("Trustor") to First American Title Insurance Company (referred to below as "Trustee") for the benefit of Goldman Sachs Bank USA, a New York chartered bank, whose address is c/o Genesis Capital, LLC, 15303 Ventura Boulevard, Suite 700, Sherman Oaks, CA 91403, (referred to below sometimes as "Lender" and sometimes as "Beneficiary").**

**CONVEYANCE AND GRANT.** For valuable consideration, Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, **(the "Real Property") located in Uintah County, State of Utah:**

**See EXHIBIT A, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.**

**The Real Property or its address is commonly known as 200 East 600 South, Vernal, UT 84078 and 110 North 2500 West, Vernal, UT 84078.**

**The Real Property tax identification number is 05:052:0203 and 04:126:0055.**

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a security interest in the Personal Property and Rents.

**THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PAYMENT AND PERFORMANCE OF ANY AND ALL OBLIGATIONS OF THE TRUSTOR UNDER THE LOAN AGREEMENT, THE NOTE, THE LOAN DOCUMENTS, AND THIS DEED OF TRUST. ANY EVENT OF DEFAULT UNDER THE LOAN AGREEMENT, OR ANY OF THE LOAN DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:**

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Loan Agreement, the Note, this Deed of Trust, and the Loan Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property. This instrument is a Trust Deed executed in conformity with the Utah Trust Deed Act, UCA 57-1-19, et seq.

**Duty to Maintain.** Trustor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Construction.** Without the prior written consent of Lender in each instance, Trustor shall not demolish, construct, or, except as otherwise expressly provided herein, restore, or alter the Property or any portion thereof, except for normal repair and maintenance in the ordinary course of business; nor consent to or permit any such demolition, construction, restoration, addition or alteration to the Property or any portion of the Property. No excavation, construction, earth work, site work or any other mechanic's lienable work shall be done to or for the benefit of a Property, without Lender's approval. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Trustor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Trustor can and will pay the cost of such improvements.

**Compliance With Environmental Laws.** Trustor represents and warrants to Lender that: (1) during the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) (a) except as previously disclosed to and acknowledged by Lender in writing, neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be at Trustor's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any applicable laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of Hazardous Substances on, under, about or from the Property, including, without limitation, if occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

**Nuisance, Waste.** Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

**Removal of Improvements.** Trustor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent.

**Lender's Right to Enter.** Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust, the Loan Agreement and the other Loan Documents.

**Compliance with Governmental Requirements.** Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

**Duty to Protect.** Trustor agrees neither to abandon nor leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

**DUE ON SALE OR ENCUMBRANCE - CONSENT BY LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon a Sale or Transfer. A "Sale or Transfer" means (x) the sale, transfer, mortgage, assignment, encumbrance, lease or conveyance of all or any portion of the Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of sale, transfer, mortgage, assignment, encumbrance, lease or conveyance of an interest in the

Real Property, and (y) if Trustor is a corporation, partnership, limited liability company, joint venture, estate or trust (a) the transfer, assignment, pledge, encumbrance or conveyance of more than twenty-five percent (25%) of the direct or indirect legal or beneficial interests in such entity or (b) any change in the control or management of such entity, even if the change in control or management entails a change in ownership of less than twenty-five percent (25%) (any Sale or Transfer described in this clause (y) being a "Trustor Transfer"). Notwithstanding the foregoing and anything herein to the contrary, prior to any Trustor Transfer which after giving effect to such Trustor Transfer would result in any person or entity who owned less than ten percent (10%) of the direct or indirect legal or beneficial interests in Trustor as of the date hereof owning ten percent (10%) or more of such direct or indirect legal or beneficial interests in Trustor, (i) Trustor shall provide Lender at least thirty (30) days' prior written notice thereof, (ii) Trustor shall have delivered to Lender or cooperated with Lender in obtaining, and Lender shall have approved, customary searches on such person or entity (including credit, judgment, lien, litigation, bankruptcy, criminal and OFAC), and (iii) Trustor shall be responsible for any reasonable out-of-pocket costs and expenses in connection therewith.

**TAXES AND LIENS.** The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

**Payment.** Trustor shall pay when due all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens other than liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, and such liens and encumbrances as may be approved in writing by the Lender.

**Right to Contest.** Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

**Evidence of Payment.** Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

**PROPERTY DAMAGE INSURANCE.** The following provisions relating to insuring the Property are a part of this Deed of Trust.

**Maintenance of Insurance.** Without limiting the provisions in the Loan Agreement with respect to insurance, Trustor shall procure and maintain (i) policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with Lender named as the loss payee thereunder, (ii) comprehensive general liability insurance in such coverage amounts as Lender may request (but not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate) with Trustor and Lender being named as additional insureds in such liability insurance policies, (iii) such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require, and (iv) if the Real Property is located in an area identified by the Federal Emergency Management Agency or the Federal Insurance Administration as a "100 year flood plain" or as having special flood hazards (including Zones A and V), flood insurance, if available, for the full unpaid principal balance of the Loan and any prior liens on the property securing the Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan. Notwithstanding the foregoing, in no event shall Trustor be required to provide hazard insurance in excess of the replacement value of the improvements on the Real Property. Policies shall be written in form, amounts, coverages and basis acceptable to Lender and issued by a company or companies acceptable to Lender and shall not exclude vacant properties for any type of dwellings. Trustor, upon request of Lender, will deliver to Lender from time to time copies of the policies of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person.

**Application of Proceeds.** Trustor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if an Event of Default exists or Trustor fails to do so within fifteen (15) days of the casualty. All insurance proceeds in connection with a casualty shall be due and payable solely to Lender, and if Trustor or any other party other than Lender receives any insurance proceeds, Trustor shall immediately deliver such proceeds to Lender and shall endorse, or cause all such third parties to endorse, checks payable therefor to the order of Lender. Trustor hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, to endorse any such check payable to the order of Lender. Lender may, at Lender's election, retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If the proceeds are to be applied to restoration and repair, Trustor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if no Event of Default exists. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under the Loan Agreement, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

**Trustor's Report on Insurance.** Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Loan Documents, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Loan Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the Default Rate from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled

upon an Event of Default.

**WARRANTY; DEFENSE OF TITLE.** The following provisions relating to ownership of the Property are a part of this Deed of Trust:

**Title.** Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

**Defense of Title.** Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

**Compliance With Laws.** Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Trustor's Indebtedness shall be paid in full.

**CONDEMNATION.** The following provisions relating to eminent domain and condemnation proceedings are a part of this Deed of Trust:

**Proceedings.** If any eminent domain or condemnation proceeding is commenced affecting the Property, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to pursue or defend the action and obtain the award. Trustor may be the nominal party in any such proceeding, but Lender shall be entitled, at its election, to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

**Application of Net Proceeds.** Any award or settlement proceeds in connection with any eminent domain or condemnation proceedings shall be due and payable solely to Lender, and if Trustor or any other party other than Lender receives any such award or settlement proceeds, Trustor shall immediately deliver such award or settlement proceeds to Lender. If any award is made or settlement entered into in any condemnation proceedings affecting all or any part of the Property or by any proceeding or purchase in lieu of condemnation, Lender may at its election, require that all or any portion of the award or settlement proceeds be applied to the Indebtedness and to the repayment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the eminent domain or condemnation proceedings.

**IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES.** The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

**Current Taxes, Fees and Charges.** Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on all or any portion of the Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

**Taxes.** The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Trustor.

**Subsequent Taxes.** If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

**SECURITY AGREEMENT; FINANCING STATEMENTS; FIXTURE FILING.** The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

**Security Agreement.** This instrument shall constitute a Security Agreement to the extent any of the Property constitutes Personal Property, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code.

**Security Interest.** Trustor, by executing this Deed of Trust, hereby grants Lender a first and prior security interest in the Personal Property to secure the Indebtedness and agrees that Lender will have all the rights and remedies of a secured party under the Uniform Commercial Code. Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon the occurrence of an Event of Default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon an Event of Default, Trustor shall, at Trustor's expense, assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

**Addresses.** The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

**Fixture Filing.** As to all of the Personal Property which is or which hereafter becomes a "fixture" under applicable law, it is intended by Trustor and Lender that this Deed of Trust constitutes a fixture filing filed with the real estate records of the County in which the Real Property is located, under the Uniform Commercial Code. For purposes of this fixture filing, the "Debtor" is the Trustor and the "Secured Party" is the Lender. A description of the land which relates to the fixtures is set forth in Exhibit A attached hereto.

**FURTHER ASSURANCES; ATTORNEY-IN-FACT.** The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

**Further Assurances.** At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages,

deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under the Loan Agreement, the Note, this Deed of Trust, and the Loan Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

**Attorney-in-Fact.** If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

**FULL PERFORMANCE.** If Trustor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, following Trustor's payment in full of the Indebtedness, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Lender may charge Trustor a reasonable reconveyance fee at the time of reconveyance.

**EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

**Payment Default.** Any regular monthly debt service payment under the Note is not paid when due, or any other amount secured by this Deed of Trust (including but not limited to any payment of principal or interest due on the Maturity Date, as defined in the Note, any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien) is not paid so that it is received by Lender when due.

**Other Defaults.** Trustor fails to comply with or to perform any term, obligation, covenant or condition contained in this Deed of Trust that is not otherwise listed as an Event of Default hereunder (a "General Default").

**Cross Default.** A default (following the expiration of all applicable notice and cure periods) occurs under any of the other Loan Documents.

**Indebtedness; Liens; Sale or Transfer.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Deed of Trust or the Loan Agreement, if Trustor creates, incurs or assumes indebtedness for borrowed money, including capital leases, (2) if Trustor engages in a Sale or Transfer, (3) if Trustor sells with recourse any of Trustor's accounts, except to Lender, (4) if Trustor grants any junior or senior security interest in, or mortgage of, all or any portion of the Property, or (5) if Trustor enters into any agreement with any Person other than Lender that prohibits Trustor from granting any security interest in, or mortgage of, all or any portion of the Property.

**Default in Favor of Third Parties.** Should Trustor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Trustor's property or Trustor's ability to repay the Indebtedness or Trustor's ability to perform Trustor's obligations under the Loan Agreement, this Deed of Trust or any of the other Loan Documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under the Loan Agreement, this Deed of Trust or the Loan Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Deed of Trust, the Loan Agreement or any of the Loan Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Death or Dissolution.** The dissolution of Trustor (regardless of whether election to continue is made), or if any member, partner, or equity holder withdraws from Trustor, or any other termination of Trustor's existence as a going business or the death of any member, partner or equity holder of Trustor.

**Bankruptcy or Insolvency.** The insolvency of Trustor, or the appointment of a receiver for any part of Trustor's property, or Trustor makes any assignment for the benefit of creditors, or Trustor engages in any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor (any of the foregoing, a "Bankruptcy Default").

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Other Agreement.** Any breach by Trustor under the terms of any other agreement between Trustor and Lender, or any Affiliate of Trustor and Lender, that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

**Condemnation.** All or any material portion of the Collateral is condemned, seized, or appropriated without compensation, and Trustor does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

**Insurance.** If Trustor fails to maintain in full force and effect the insurance required hereunder.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty, or if any guarantor of the Loan is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property.

**Judgment.** A judgment or judgments for the payment of money rendered against Trustor or any Guarantor in excess of \$50,000.00 in the aggregate, and any such judgment remains unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution.

**Lien.** Any lien (including mechanics lien) is issued or levied on all or any portion of the Property and Trustor has not cured within fourteen (14) days.

**Adverse Change.** A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**Right to Cure.** If any General Default is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding six (6) months, it may be cured if Trustor, after Lender sends written notice to Trustor demanding cure of such General Default: (1) cures the General Default within five (5) days; or (2) if the cure requires more than five (5) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the General Default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical, provided that under no circumstances shall Trustor have more than thirty (30) days to cure any General Default.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** Lender shall have the right at its option without notice to Trustor to declare the entire Indebtedness immediately due and payable, including any prepayment fee which Trustor would be required to pay; provided, however, that, notwithstanding the foregoing, if a Bankruptcy Default occurs, then the Indebtedness shall immediately become due and payable without the giving of any notice or other action by Lender.

**Foreclosure.** With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**UCC Remedies.** With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

**Collect Rents.** Lender shall have the right, without notice to Trustor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Trustor irrevocably designates Lender as Trustor's attorney-in-fact, coupled with an interest, to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

**Appoint Receiver.** Lender shall have the right, without notice to any person, to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to complete any unfinished construction on the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and to sell the Property and apply the proceeds of such Rents and sale, over and above the cost of the receivership, against the Indebtedness. Trustor hereby waives any requirement that the receiver be impartial and disinterested as to all of the parties and agrees that employment by Lender shall not disqualify a person from serving as a receiver.

**Tenancy at Sufferance.** If Trustor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Trustor, Trustor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

**Other Remedies.** Trustee or Lender shall have any other right or remedy provided in this Deed of Trust, the Note, the Loan Agreement, the other Loan Documents or available at law or in equity.

**Notice of Sale.** Lender shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

**Sale of the Property.** To the extent permitted by applicable law, Trustor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

**Election of Remedies.** Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**No Beneficiary in Possession.** None of the remedies afforded to Lender under the Loan Documents, at law or in equity shall cause Lender or Trustee to be deemed or construed to be a mortgagee in possession of the Property, to obligate Lender or Trustee to lease the Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any lease or otherwise.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, Trustor shall pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Expenses covered by this paragraph include, without limitation, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustor also will pay any court costs, in addition to all other sums provided by law.

**Rights of Trustee.** Trustee shall have all of the rights and duties of Lender as set forth in this section.

**POWERS AND OBLIGATIONS OF TRUSTEE.** The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

**Powers of Trustee.** In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property,

including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

**Obligations to Notify.** Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Trustor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

**Trustee.** Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

**Successor Trustee.** Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of the county in which the Real Property is located. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

**Acceptance by Trustee.** Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**NOTICES.** Any notice required to be given under this Deed of Trust shall be given in writing, and shall be effective when actually delivered, when sent by electronic mail prior to 5:00 p.m. (Pacific Standard Time or Pacific Daylight Time as applicable, on a Business Day) (unless otherwise required by law) provided that a copy is simultaneously sent by one of the other permitted means of giving notice set forth in this section, or one (1) Business Day after being deposited with a nationally recognized overnight courier, directed to the addresses shown near the beginning of this Deed of Trust. Trustor requests that copies of any notices of default and sale be directed to Trustor's address shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all notices given under Utah Code Ann. Section 57-1-26 shall be given as required therein. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties in accordance with the terms of this paragraph, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided or required by law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

**SALE OR ASSIGNMENT.** Trustor agrees that Lender may elect, at any time, to sell or otherwise assign any Note, any Security Agreement that secures it and the obligations and that any such sale or assignment may be to one or more financial institutions, private investors and/or other persons or entities (each, an "Assignee"), in Lender's sole and absolute discretion. Additionally, Trustor hereby agrees that the obligations, the Collateral and Lender's rights and remedies under any Loan Document may be assigned to any Assignee without any further action under any Loan Document or any consent by, or notice to, Trustor, Guarantor or any other Person. In connection with any such sale or assignment, Trustor further agrees as follows: (a) Lender may disseminate to any such actual or prospective Assignee(s) all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (1) the Loan, including any Note, any Security Agreement, any loan advances, any Property and Improvements encumbered by any Security Agreement and its operation; (2) Trustor, any Guarantor and any other party connected with the Loan (including, without limitation, any constituent partner, joint venturer or member of Trustor, or any Guarantor); and/or (3) any lending relationship other than the Loan that Lender may have with any such party connected with the Loan or any of their affiliates; (b) Lender may be authorized by the Assignee to act as loan servicing agent on Assignee's behalf in connection with any Note or Security Agreement assigned and the Obligations and, in connection therewith, to exercise the rights and obligations of Lender set forth in the Loan Documents as agent for the Assignee; (c) the Loan Documents shall be sufficient evidence of the obligations of Trustor to each Assignee, and upon written request by Lender, Trustor shall enter into such amendments or modifications to the Loan Documents as may be reasonably required in order to evidence any such sale or assignment; (d) the indemnity obligations of Trustor under the Loan Agreement and all other Loan Documents shall also benefit and be enforceable by any Assignee and; (e) the sale or assignment of a Note and its related Security Agreement or any obligations shall not be deemed to have reduced the total principal amount outstanding under the Loan.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Deed of Trust:

**Amendments.** This Deed of Trust, together with any Loan Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by Trustor and Lender.

**Annual Reports.** If the Property is used for purposes other than Trustor's residence, Trustor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

**Arbitration; Jury Waiver.** Trustor and, by its acceptance hereof, Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Deed of Trust or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party; provided, however, in the event of an Event of Default by Trustor, Lender shall have the unilateral right to exercise its remedies in its sole and absolute discretion, and under such circumstances, Lender can choose in its sole discretion to pursue arbitration or not and Trustor hereby waives any right to enforce the arbitration provisions of this Deed of Trust if contrary to the choice of Lender. No act by or on behalf of Lender to exercise rights and remedies with respect to the Property in the event of an Event of Default by Trustor (including any action to take, foreclosure upon, realize upon or dispose of any Property) shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning the Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Trustor and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer

to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Deed of Trust shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision. Any arbitration, judicial reference or trial by a judge of any dispute, claim or controversy between the parties hereto will take place on an individual basis without resort to any form of class or representative action (the "Class Action Waiver"). Regardless of anything else in this Section, the validity and effect of the Class Action Waiver may be determined only by a court or referee and not by an arbitrator. Trustor and, by its acceptance hereof, Lender acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate all disputes, claims and controversies between the parties. If the Class Action Waiver is limited, voided or found unenforceable, then the parties' agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. Trustor and, by its acceptance hereof, Lender acknowledge and agree that under no circumstances will a class action be arbitrated. WITHOUT INTENDING IN ANY WAY TO LIMIT THIS DISPUTE RESOLUTION PROVISION, TRUSTOR AND, BY ITS ACCEPTANCE HEREOF, LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY AND ALL "DISPUTES" AND ANY ACTION ON ANY "DISPUTE." THIS WAIVER SHALL APPLY TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO JUDICIAL REFERENCE OR ARBITRATION, OR IS DEEMED BY THE ARBITRATOR, REFEREE OR ANY COURT WITH JURISDICTION TO BE NOT REQUIRED TO BE DETERMINED BY JUDICIAL REFERENCE OR ARBITRATION, OR NOT SUSCEPTIBLE OF BEING SO DETERMINED. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES AND THE PARTIES HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. THE PARTIES ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. TRUSTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. WHETHER THE CLAIM IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.

**Waiver of Homestead Exemption.** Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all indebtedness secured by this Deed of Trust.

**Caption Headings.** Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

**Merger.** There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

**Governing Law.** This Deed of Trust was accepted by Lender in the state of California, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Deed of Trust and the other Loan Documents and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of California applicable to contracts made and performed in such state and any applicable law of the United States of America, except that at all times the provisions for the foreclosure of liens and creation, perfection and enforcement of the security rights and interests created pursuant hereto and pursuant to the other Loan Documents in any Collateral which is located in the state in which the Property is located shall be governed by and construed according to the law of the state where the Property is located. Except as provided in the immediately preceding sentence, Trustor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any other jurisdiction governs this Deed of Trust and the other Loan Documents.

**Jurisdiction.** ANY CLAIM OR ACTION ARISING UNDER THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS MAY, AT LENDER'S OPTION, BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE STATE OF CALIFORNIA, AND TRUSTOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND TRUSTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

**Successors and Assigns.** Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the Indebtedness.

**Time is of the Essence.** Time is of the essence in the performance of this Deed of Trust.

**Joint and Several.** If Trustor constitutes more than one individual or entity, the representations, covenants, warranties and obligations of



Trustor hereunder are joint and several with respect to each individual or entity.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall first have the meanings attributed to such terms in the Loan Agreement, and if not defined in the Loan Agreement, in the Uniform Commercial Code:

**Affiliate.** The word "Affiliate" means any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Trustor, or that has a common guarantor with Trustor. "Control," for purposes of this definition, means direct or indirect ownership or control of more than five percent (5%) of the voting interests of the subject entity. "Person," for purposes of this definition, means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

**Beneficiary.** The word "Beneficiary" means Goldman Sachs Bank USA, a New York chartered bank, and its successors and/or assigns.

**Collateral.** The word "Collateral" means all property and assets granted as collateral security for the Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust by Trustor to Trustee for the benefit of Lender, encumbering the Property and other assets and rights therein provided, as amended, restated or otherwise modified from time to time.

**Default Rate.** The words "Default Rate" have the meaning set forth in the Note.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the Events of Default section of this Deed of Trust.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Indebtedness.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Improvements.** The word "Improvements" means all existing and future improvements, buildings, structures, facilities, additions, replacements and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note and the Loan Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Trustor is responsible under the Loan Agreement or under any of the Loan Documents.

**Lender.** The word "Lender" means Goldman Sachs Bank USA, a New York chartered bank, and its successors and/or assigns.

**Loan.** The word "Loan" means the loan or loans made to Trustor under this Deed of Trust, the Loan Agreement, the Note and the other Loan Documents as described therein in a maximum principal amount of \$9,094,400.00 Dollars.

**Loan Agreement.** The words "Loan Agreement" mean the Business Loan Agreement, dated as of 12/27/2019, by Trustor and Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the agreement.

**Loan Documents.** The words "Loan Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**Note.** The word "Note" means the promissory note dated 12/27/2019, in the original principal amount of \$9,094,400.00 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to or located at, on or in the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property. The words "Personal Property" also include all tangible and intangible items obtained or owned by, or in the possession of Trustor that are directly or indirectly related to the acquisition, development, design, construction, permitting, marketing, or habitation of the Real Property or the Improvements now existing or hereinafter constructed on the Real Property, whether heretofore or hereafter issued, prepared, or executed, including without limitation all permits, licenses, authorizations and approvals, trademarks and tradenames, and any and all land use entitlements, development rights, sewer capacity, approvals, density allocations and other rights or approvals relating to or authorizing the development or occupancy of the Property, plus all utility or other deposits, reimbursement rights, studies, tests, contracts, plans and specifications, relating to the Property and Improvements.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

**Rents.** The word "Rents" means all present and future leases, rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property together with the cash proceeds of the Rents.

**Trustor.** The word "Trustor" means VERNAL VENTURES LLC, a Florida limited liability company and Cassidy Property Management, LLC, a Pennsylvania limited liability company.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.

TRUSTOR:  
VERNAL VENTURES LLC, a Florida limited liability company  
By: DLP Capital Partners LLC, a Delaware limited liability company, its Manager  
By: DLP Real Estate Capital Inc., a Florida corporation, its Manager

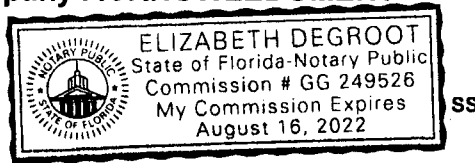
By: \_\_\_\_\_  
Donald Wenner, President

Cassidy Property Management, LLC, a Pennsylvania limited liability company  
By: VERNAL VENTURES LLC, a Florida limited liability company, its Authorized Signatory  
By: DLP Capital Partners LLC, a Delaware limited liability company, its Manager  
By: DLP Real Estate Capital Inc., a Florida corporation, its Manager

By: \_\_\_\_\_  
Donald Wenner, President

**Limited Liability Company ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ST. JOHN'S



On this 27th day of DECEMBER, 2019, before me, the undersigned Notary Public, personally appeared Donald Wenner, President of DLP Real Estate Capital Inc., a Florida corporation, said entity being the Manager of DLP Capital Partners LLC, a Delaware limited liability company, said entity being the Manager of VERNAL VENTURES LLC, a Florida limited liability company of the limited liability company that executed the ASSIGNMENT OF LEASES AND RENTS and acknowledged the Assignment to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Assignment and in fact executed the Assignment on behalf of the limited liability company.

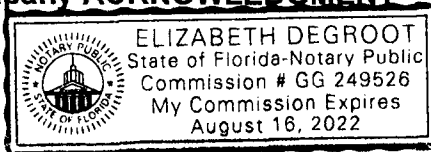
By: \_\_\_\_\_  
Notary Public in and for the State of Florida

Residing at ST. JOHN'S COUNTY, FL  
My commission expires 8/16/22

**Limited Liability Company ACKNOWLEDGMENT**

STATE OF St. Johns

COUNTY OF Florida



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On this 27th day of December, 2019, before me, the undersigned Notary Public, personally appeared **Donald Wenner, President of DLP Real Estate Capital Inc., a Florida corporation, said entity being the Manager of DLP Capital Partners LLC, a Delaware limited liability company, said entity being the Manager of VERNAL VENTURES LLC, a Florida limited liability company, said entity being the Authorized Signatory of Cassidy Property Management, LLC, a Pennsylvania limited liability company of the limited liability company that executed the ASSIGNMENT OF LEASES AND RENTS and acknowledged the Assignment to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Assignment and in fact executed the Assignment on behalf of the limited liability company.**

By *Elizabeth D. Degroot*  
Notary Public in and for the State of \_\_\_\_\_

Residing at St. Johns County, FL

My commission expires 8/16/22

**Exhibit "A"**

**Legal Description**

Real property in the City of Vernal, County of Uintah, State of Utah, described as follows:

PARCEL 1:

LOT 3 OF ASHLEY CREEK VILLAGE SUBDIVISION, VERNAL CITY, UINTAH COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UINTAH COUNTY RECORDER.

PARCEL 1A:

THE EASEMENTS BENEFITING AND APPURTENANT TO THE ABOVE DESCRIBED PARCEL 1, GRANTED PURSUANT TO THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED DECEMBER 19, 2011 AS ENTRY NO. 2011009105 IN BOOK 1259 AT PAGE 49 OF OFFICIAL RECORDS.

PARCEL 2:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 21 EAST, SALT LAKE BASE & MERIDIAN AND RUNNING THENCE ALONG THE WEST LINE OF SAID SECTION 21 NORTH 01°57'21" WEST 229.19 FEET TO THE TRUE POINT OF BEGINNING; THENCE ALONG THE WEST LINE OF SAID SECTION 21 NORTH 01°57'21" WEST 426.01 FEET TO THE NORTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED IN THAT WARRANTY DEED RECORDED AS ENTRY NO. 2007006183 IN THE OFFICE OF THE UINTAH COUNTY RECORDER; THENCE ALONG THE NORTH LINE OF SAID PARCEL NORTH 88°34'27" EAST 401.58 FEET; THENCE SOUTH 55°20'37" EAST 63.85 FEET; THENCE NORTH 77°27'24" EAST 203.71 FEET TO A POINT ON THE ARC OF A 151.79 FOOT RADIUS CURVE TO THE RIGHT (RADIUS POINT BEARS SOUTH 13°29'50" EAST); THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH AN ARC LENGTH OF 35.36 FEET AND A CENTRAL ANGLE OF 13°20'46"; THENCE NORTH 89°53'09" EAST 36.15 FEET; THENCE SOUTH 04°43'23" WEST 202.85 FEET; THENCE SOUTH 69°31'59" WEST 45.35 FEET TO A POINT ON THE ARC OF A 25 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS SOUTH 20°27'44" EAST); THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH AN ARC LENGTH OF 45.13 FEET AND A CENTRAL ANGLE OF 103°25'54"; THENCE SOUTH 33°25'37" EAST 78.16 FEET TO A POINT ON THE ARC OF A 5.00 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS NORTH 59°59'59" EAST); THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH AN ARC LENGTH OF 5.24 FEET AND A CENTRAL ANGLE OF 59°59'59"; THENCE NORTH 90°00'00" EAST 1.59 FEET; THENCE SOUTH 15°02'16" EAST 53.42 FEET; THENCE NORTH 88°36'03" EAST 287.31 FEET; THENCE SOUTH 01°23'57" EAST 56.10 FEET; THENCE SOUTH 88°36'03" WEST 989.99 FEET TO THE POINT OF BEGINNING.

APN: 05:052:0203 & 04:126:0055  
SWNW