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10/15/2019 2:56:00 PM \$40.00  
Book - 10845 Pg - 7742-7762  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 21 P.

When recorded, return to:

Hillcrest Bank, a division of NBH Bank  
7800 East Orchard Road, Suite 300  
Greenwood Village, CO 80111  
*CT- 113172-CAF*

Tax Parcel Nos. 22-23-178-012 and  
22-23-178-013 and 22-23-179-009

### DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

This DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter called "Deed of Trust") is made to be effective as of the 11th day of October, 2019, by SETS RE LLC, a Delaware limited liability company, whose address is 1877 South 200 E, Salt Lake City, UT 84115 ("Grantor") to COTTONWOOD TITLE INSURANCE AGENCY, INC., located at 1996 East 6400 South, Suite 120, Salt Like City, UT 84121 ("Trustee") for the benefit of HILLCREST BANK, a division of NBH Bank, a Colorado state bank, whose mailing address is 7800 East Orchard Road, Suite 300, Greenwood Village, CO 80111 ("Beneficiary").

WITNESSETH:

#### ARTICLE 1

#### GRANTING CLAUSE; WARRANTY OF TITLE

1.1 Grantor hereby irrevocably grants, bargains, sells, and conveys to Trustee, in trust, WITH POWER OF SALE, for the use and benefit of Beneficiary, all of Grantor's present and future estate, right, title and interest in and to that real property and all buildings and other improvements now thereon or hereafter constructed thereon (the "Premises"), in the County of Salt Lake, State of Utah, described on Exhibit A attached hereto and by this reference made a part hereof, together with all of the following which, with the Premises (except where the context otherwise requires), are hereinafter collectively called the "Collateral":

- (a) All appurtenances in and to the Premises;
- (b) All water and water rights, contracts with water districts, ditches and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, minerals, oil and gas rights, royalties, lease or leasehold interests owned by Grantor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;
- (c) All right, title and interest of Grantor now owned or hereafter acquired in and to all streets, roads, alleys and public places, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;

(d) All machinery, equipment, fixtures and materials now or at any time attached to the Premises, including but not limited to all surface and subsurface irrigation and sprinkler system equipment, together with all processing, manufacturing and service equipment and other personal property now or at any time hereafter located on or appurtenant to the Premises and used in connection with the management and operation thereof;

(e) Any licenses, contracts, permits and agreements required or used in connection with the ownership, operation or maintenance of the Premises, including but not limited to any purchase and sale contracts, and the right to the use of any tradename, trademark, or service mark now or hereafter associated with the operation of any business conducted on the Premises;

(f) Any and all insurance proceeds (other than insurance proceeds attributable to personal property owned by any tenant), and any and all awards, including interest, previously and hereafter made to Grantor for taking by eminent domain of the whole or any part of the Premises or any easements therein; and

(g) All other existing and future leases, subleases, licenses and other agreements for the use and occupancy of all or any portion of the Premises and all income, receipts, revenues, rents, issues and profits arising from the use or enjoyment of all or any portion of the Premises as further defined and described in the Assignment of Rents, Leases and Other Income by and between Grantor and Beneficiary dated on even date herewith (the "Assignment of Rents").

1.2 Grantor warrants that it is well and truly seized of a good and marketable title in fee simple to the Premises, that it is the lawful owner of the rest of the Property, and that, except for those matters approved by Beneficiary and specifically described on Exhibit B attached hereto (the "Permitted Exceptions"), the title to all the Property is clear, free and unencumbered; Grantor and its successors and assigns shall forever warrant and defend the same unto Beneficiary, its successors and assigns, against all claims whatsoever, subject to the Permitted Exceptions.

GRANTOR FURTHER REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE 2

### OBLIGATION SECURED

This Deed of Trust is given for the purpose of securing, in such order of priority as Beneficiary may elect:

2.1 Payment of aggregate principal sum of TWENTY-FIVE MILLION, SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$25,750,000.00), which may include, without limitation, additional extension and other fees, late charges, prepayment premiums and reasonable attorneys' fees, according to the terms of: (i) that certain promissory note dated December 10, 2018, made by Mountain West Brands, LLC, a Utah limited liability company and MWB MS Grill, LLC, a Utah limited liability company (collectively, the "MWB Entities") in the original principal amount of \$15,600,000.00 payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof; (ii) that certain promissory note dated December 10, 2018, made by the MWB Entities in the original principal amount of \$2,000,000.00 payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof; (iii) that certain promissory note dated on even date herewith, made by the MWB Entities in the original principal amount of \$4,000,000.00 payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof; and (iv) that certain promissory note dated on even date herewith, made by Grantor in the original principal amount of \$4,150,000.00 payable to the order of Beneficiary, and all extensions, modifications, renewals or replacements thereof (hereinafter called, the "Notes"). The principal, interest and other fees and charges shall be repaid as set forth in the Notes, and the entire unpaid principal balance, all accrued and unpaid interest and all other amounts payable shall be due and payable on a date no later than October 11, 2044 (the "Maturity Date"), unless otherwise extended as set forth in the Notes. The Notes bear interest at a variable rate in accordance with the terms of the Notes, the terms and provisions of which are by this reference incorporated herein. Grantor is affiliated with the MWB Entities by common ownership and will

benefit directly and indirectly from the funding of the Notes. Further the assets of the MWB Entities are also being pledged as collateral to secure the repayment of the Notes. Accordingly, Grantor acknowledges and agrees that there is sufficient consideration for the pledge of its assets to secure repayment of the debt of the MWB Entities. Grantor expressly waives, to the fullest extent permitted by law, any and all benefits and defenses (including, without limitation, suretyship defenses) under any statutes or rules now or hereafter in effect that purport to confer specific rights upon or make specific defenses and procedures available to Grantor, and waives any defense arising by reason of any disability or other defense of a trustor or by reason of the cessation from any cause whatsoever of the liability of a trustor.

2.2 Payment, performance and observance by Grantor of each covenant, condition, provision and agreement contained herein and of all monies expended or advanced by Beneficiary pursuant to the terms hereof, or to preserve any right of Beneficiary hereunder, or to protect or preserve the Collateral or any part thereof.

2.3 Payment, performance and observance by Grantor of each covenant, condition, provision and agreement contained in the Loan Agreement of even date herewith, by and between Grantor and Beneficiary and payment, performance and observance by the MWB Entities of each covenant, condition, provision and agreement contained in the Credit Agreement dated December 10, 2018, by and between the MWB Entities and Beneficiary (collectively, the "Loan Agreements") and in any other document or instrument related to the indebtedness hereby secured and of all monies expended or advanced by Beneficiary pursuant to the terms thereof or to preserve any right of Beneficiary thereunder.

2.4 Payment of any and all additional loans and advances made by Beneficiary to Grantor and/or to the then record owner or owners of the Collateral and any other indebtedness or obligation of Grantor and/or the then record owner or owners of the Collateral to Beneficiary of any kind, direct or indirect (excluding, however, any such loan to, or indebtedness or obligation of, an individual for personal, family or household purposes), whether now existing or hereafter arising, with interest thereon, late charges, extension and other fees, prepayment premiums and reasonable attorneys' fees, according to the terms of the promissory note(s), credit agreement(s) and/or guarantees evidencing such loans, advances, indebtedness and obligations, and all extensions, modifications, renewals or replacements thereof.

All of the indebtedness and obligations secured by this Deed of Trust are hereinafter collectively called the "Obligation." Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Loan Agreements.

### **ARTICLE 3**

#### **INTENTIONALLY OMITTED**

### **ARTICLE 4**

#### **SECURITY AGREEMENT**

4.1 This Deed of Trust shall cover, and the Collateral shall include, all property now or hereafter affixed or attached to or incorporated upon the Premises, which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Premises. To the extent any of the Collateral consists of rights in action or personal property covered by the Uniform Commercial Code, this Deed of Trust shall also constitute a security agreement, and Grantor hereby grants to Beneficiary, as secured party, a security interest in such property, including all proceeds thereof, for the purpose of securing the Obligation. To the extent any of the Collateral or Personal Property, as hereinafter defined, may be or has been acquired with funds advanced by Beneficiary, this security interest is a purchase money security interest. In addition, for the purpose of securing the Obligation, Grantor hereby grants to Beneficiary, as secured party, a security interest in all of the property described below in, to, or under which Grantor now has or hereafter acquires any right, title or interest, whether present, future, or contingent: all equipment, inventory, accounts, general intangibles, instruments, documents, and chattel paper, as those terms are defined in the Uniform Commercial Code, and all other personal property of any kind (including without limitation money and rights to the payment of money), whether now existing or hereafter created, that are now or at any time hereafter are (i) in the possession or control of Beneficiary in any capacity; (ii) erected upon, attached to, or

appurtenant to, the Premises; (iii) located or used on the Premises or identified for use on the Premises (whether stored on the Premises or elsewhere); or (iv) used in connection with, arising from, related to, or associated with the Premises or any of the personal property described herein, the construction of any improvements on the Premises, the ownership, development, maintenance, leasing, management, or operation of the Premises, the use or enjoyment of the Premises, or the operation of any business conducted on the Premises; including without limitation all such property more particularly described as follows:

(a) Buildings, structures and improvements, and building materials, fixtures and equipment to be incorporated into any buildings, structures or improvements;

(b) Goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, including without limitation, all such items used for (i) generation, storage or transmission of air, water, heat, steam, electricity, light, fuel, refrigeration or sound; (ii) ventilation, air-conditioning, heating, refrigeration, fire prevention and protection, sanitation, drainage, cleaning, transportation, communications, maintenance or recreation; (iii) removal of dust, refuse, garbage or snow; (iv) transmission, storage, processing or retrieval of information; (v) surface and subsurface irrigation and sprinkler system equipment, and (vi) floor, wall, ceiling and window coverings and decorations;

(c) Income, receipts, revenues, rents, issues and profits, including without limitation, room rents, minimum rents, additional rents, percentage rents, occupancy and user fees and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, and cancellation premiums;

(d) Claims for damages arising from the breach of any leases or subleases;

(e) Water and water rights, contracts with water districts, ditches and ditch rights, reservoirs and reservoir rights, stock or interest in irrigation or ditch companies, minerals, oil and gas rights, royalties, and lease or leasehold interests;

(f) Plans and specifications prepared for the construction of any improvements, including without limitation, all studies, estimates, data, and drawings;

(g) Documents, instruments and agreements relating to, or in any way connected with, the operation, control or development of the Premises, including without limitation, any declaration of covenants, conditions and restrictions and any articles of incorporation, bylaws and other membership documents of any property owners association or similar group;

(h) All of Grantor's rights of every kind under or pursuant to any declaration of covenants, conditions and restrictions or similar documents or instruments, which shall hereafter be filed in order to create a condominium community on the Premises, and any modifications thereof or supplements thereto (collectively, the "Declaration"), and all of Grantor's rights under or pursuant to any and all other documents which may hereafter be executed or otherwise made effective with respect to the creation or modification of a condominium community on the Premises or the creation of an association to govern or administer such community, including, without limitation, all development rights, special declarant rights, rights with respect to any design or architectural review committees, and other rights of Grantor as declarant under the Declaration;

(i) Claims and causes of action, legal and equitable, in any form whether arising in contract or in tort, and awards, payments and proceeds due or to become due, including without limitation those arising on account of any loss of, damage to, taking of, or diminution in value of, all or any part of the Premises or any personal property described herein;

(j) Sales agreements, escrow agreements, deposit receipts, and other documents and agreements for the sale or other disposition of all or any part of the Premises or any of the personal

property described herein, and deposits, proceeds and benefits arising from the sale or other disposition of all or any part of the Premises or any of the personal property described herein;

(k) Policies or certificates of insurance, contracts, agreements or rights of indemnification, guaranty or surety, and awards, loss payments, proceeds, and premium refunds that may be payable with respect to such policies, certificates, contracts, franchise agreements, license agreements, agreements or rights, other than proceeds attributable to personal property owned by any tenant;

(l) Contracts, agreements, permits, licenses, authorizations and certificates, including without limitation all architectural contracts, construction contracts, management contracts, service contracts, maintenance contracts, building permits and operating licenses;

(m) Trade names, trademarks, and service marks (subject to any franchise or license agreements relating thereto);

(n) Refunds and deposits due or to become due from any utility companies or governmental agencies;

(o) Replacements and substitutions for, modifications of, and supplements, accessions, addenda and additions to, all of the personal property described herein; and

(p) Books, records, correspondence, files and electronic media, and all information stored therein,

together with all additions to, substitutions for, the products of all of the above and all proceeds therefrom, in any form, whether cash proceeds or noncash proceeds, received when any such property (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily. Such proceeds shall include any of the foregoing specifically described property of Grantor acquired with cash proceeds. Together with, and without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Chattel Paper, Deposit Accounts, Letter-of-Credit Rights, Investment Property, Equipment and General Intangibles arising from or used in connection with the Collateral, as those terms are defined in the Uniform Commercial Code from time to time in effect in the state in which the Collateral is located. The personal property described or referred to in this Section 4.1 is hereinafter called the "Personal Property." The security interests granted in this Section 4.1 are hereinafter severally and collectively called the "Security Interest."

4.2 The Security Interest shall be self-operative with respect to the Personal Property, but Grantor shall execute and deliver on demand such additional security agreements, financing statements and other instruments as may be requested, in Beneficiary's reasonable discretion, in order to impose the Security Interest more specifically upon the Personal Property. The Security Interest, at all times, shall be prior to any other interests in the Personal Property except any lien or security interest granted in connection with any Permitted Exception. Grantor shall act and perform as necessary and shall execute and file all security agreements, financing statements, continuation statements and other documents reasonably requested by Beneficiary to establish, maintain and continue the perfected Security Interest. Grantor, within ten (10) days of receipt of written demand, shall promptly pay all costs and expenses of filing and recording, including the costs of any searches, deemed necessary by Beneficiary, in its reasonable discretion, from time to time to establish and determine the validity and the continuing priority of the Security Interest.

4.3 Grantor shall not sell, transfer, assign or otherwise dispose of any Personal Property or any interest therein without obtaining the prior written consent of Beneficiary except for the disposition of assets done in the ordinary course of business and where the proceeds therefrom are used to acquire replacement assets. Unless Beneficiary then agrees otherwise in writing, all proceeds from any permitted sale or disposition in excess of that required for replacements shall be paid to Beneficiary to be applied to the Obligation, whether or not then due. Grantor shall keep the Personal Property free of all security interests or other encumbrances, except the Security Interest and any security interests and encumbrances granted in connection with any Permitted Exception. Although proceeds of Personal Property are covered hereby, this shall not be construed to mean that Beneficiary consents to

any sale of the Personal Property except for the disposition of assets done in the ordinary course of business and where the proceeds therefrom are used to acquire replacement assets.

4.4 Grantor shall keep and maintain the Personal Property in good condition and repair and shall promptly replace any part thereof that from time to time may become obsolete, badly worn or in a state of disrepair. All such replacements shall be free of any other security interest or encumbrance, except any security interest or encumbrance granted in connection with any Permitted Exception.

4.5 Except for purposes of repair or in the ordinary course of business, or the disposition of assets done in the ordinary course of business and where the proceeds therefrom are used to acquire replacement assets, Grantor, without the prior written consent of Beneficiary, shall not remove, or permit the removal of, any Personal Property from the Premises.

4.6 Grantor hereby warrants, covenants and agrees that: (i) the Personal Property is or will be used primarily for business (other than farm) purposes; (ii) except as set forth in Section 4.5 the Personal Property will be kept at the Premises; and (iii) Grantor's records concerning the Personal Property will be kept at Grantor's address as set forth in the beginning of this Deed of Trust.

4.7 Grantor represents and warrants that (i) the name specified above for Grantor is the true and correct legal name of Grantor, and (ii) the address specified above is the principal place of business of Grantor. Grantor shall give Beneficiary prompt written notice of any change in the location of: (i) Grantor's principal place of business, as set forth in the beginning of this Deed of Trust; (ii) the Personal Property or any part thereof; or (iii) Grantor's records concerning the Personal Property. Grantor shall give Beneficiary prompt written notice of any change in the name of Grantor.

4.8 All covenants and warranties of Grantor contained in this Deed of Trust shall apply to the Personal Property whether or not expressly referred to in this Article 4. The covenants and warranties of Grantor contained in this Article 4 are in addition to, and not in limitation of, those contained in the other provisions of this Deed of Trust.

4.9 Upon its recording or registration in the real estate records of the proper office, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

## ARTICLE 5

### PROTECTION AND PRESERVATION OF THE COLLATERAL

5.1 Grantor shall neither commit nor permit to occur any waste upon the Collateral but shall at all times make or cause to be made all repairs, maintenance, renewals and replacements as may be necessary to maintain the Collateral in good condition and repair. Grantor shall keep or cause to be kept any buildings on the Collateral free of termites, dry rot, fungus, beetles and all other harmful or destructive insects and shall keep all plants, trees and shrubs included in the Collateral neatly pruned and in good condition. Grantor shall keep or cause to be kept the Collateral free of rubbish and other unsightly or unhealthful conditions. Grantor shall neither use nor permit the use of the Collateral in violation of any applicable statute, ordinance or regulation, including, without limitation, the Americans With Disabilities Act of 1990 and corresponding rules and regulations (the "ADA"), or any policy of insurance insuring the Collateral except to the extent the failure to comply with the foregoing will not have a material adverse effect on the Collateral, the Grantor or the business of the Grantor.

5.2 Grantor will, for the benefit of Beneficiary, fully and promptly keep, observe, perform and satisfy in all material respects each obligation, condition, covenant, and restriction of Grantor affecting the Premises or imposed on it under any agreement between Grantor and a third party relating to the Collateral or the Obligation secured hereby (collectively, the "Third Party Agreements"), so that there will be no default thereunder and so that the Persons (other than Grantor) obligated thereon shall be and remain at all times obligated to perform for the benefit of Beneficiary; and Grantor will not permit to exist any condition, event or fact which could allow or serve

as a basis or justification for any such person to avoid such performance in any material respect. Without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, conditioned or delayed, Grantor shall not (i) make or permit any termination or material amendment of the rights of Grantor under any Third Party Agreement; (ii) collect rents or the proceeds of the Collateral more than 30 days before the same shall be due and payable; (iii) modify or amend any leases, or except where the lessee is in default, cancel or terminate the same or accept a surrender of the leased premises; (iv) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any leases, the Loan Documents and the Credit Documents, except to the extent expressly permitted under the Loan Agreements; or (v) in any other manner impair Beneficiary's rights and interest with respect to the rents. Grantor shall promptly deliver to Beneficiary copies of any demands or notices of default received by Grantor in connection with any Third Party Agreement and allow Beneficiary the right, but not the obligation, to cure any such default. All security or other deposits, if any, received from tenants under any leases shall be segregated and maintained in an account satisfactory to Beneficiary, in its reasonable discretion, and in compliance with the law of the state where the Premises are located and with an institution satisfactory to Beneficiary.

5.3 Grantor shall promptly complete any improvements that may be commenced, in good and workmanlike manner and in conformance with plans and specifications approved by Beneficiary. Grantor shall repair and restore or cause to be repaired or restored, in conformance with the ADA, any portions of the Collateral that may be damaged or destroyed. Subject to Grantor's right to contest such liens as provided in the Loan Agreements, Grantor shall pay when due all claims for work performed and materials furnished on or in connection with the Collateral or any part thereof and shall pay, discharge, or cause to be removed, all mechanic's, artisan's, laborer's or materialman's charges, liens, claims of liens or encumbrances upon the Collateral. Grantor shall comply with all laws, ordinances and regulations now or hereafter enacted, including, without limitation, the ADA, affecting the Collateral or requiring any alterations or improvements to be made, except to the extent that failure to so modify would not have a material adverse effect upon the Collateral, the Grantor or its business. Except as required by law, Grantor shall not remove, substantially alter, or demolish any building or improvement included in the Collateral without Beneficiary's prior written consent.

(a) Grantor shall provide and maintain, or cause to be provided and maintained, policies of fire and insurance as required by the Loan Agreements. Grantor makes, constitutes and appoints Beneficiary (and all persons designated by Beneficiary) as Grantor's true and lawful agent and attorney-in-fact, with power to make, settle or adjust claims under such policies of insurance (provided, however, that so long as there shall not have occurred an Event of Default, Beneficiary shall consult with Grantor prior to finally making, settling or adjusting claims under such policies of insurance and will not settle such claims without Grantor's consent, which consent will not be unreasonably withheld, conditioned or delayed). The foregoing power of attorney is coupled with an interest and is therefore irrevocable. If payment as a result of any insurance losses shall be paid by check, draft or other instrument payable to Grantor, or to Grantor and Beneficiary jointly, Beneficiary may endorse the name of Grantor on such check, draft or other instrument, and may do such other things as Beneficiary may deem advisable to reduce the same to cash. Each insurance company is hereby authorized and directed to make payment for loss directly to Beneficiary, instead of to Grantor or to Grantor and Beneficiary jointly; Beneficiary may apply all or any part of such insurance proceeds to the payment of the Obligation, whether or not then due, or to the restoration or repair of the Collateral; provided, however, that Beneficiary shall apply the proceeds to the restoration or repair of the Collateral if the following conditions are met within ninety (90) days following the insured loss: (i) there exists no Event of Default of a monetary nature; (ii) Grantor presents reasonable evidence to Beneficiary that with respect to any casualty loss, there are sufficient funds to restore or repair the Collateral damaged or destroyed by the casualty; (iii) Grantor deposits with Beneficiary equity funds which, when combined with the insurance proceeds, are sufficient to completely restore or repair the damaged Collateral; (iv) Grantor presents reasonable evidence to Beneficiary that the Collateral will be repaired or restored to an architectural whole within twelve (12) months following the damage or destruction and Grantor has sufficient funds available to pay amounts due on the Notes during such time; (v) the Beneficiary will not incur any liability to any other person as a result of such use or release of proceeds; (vi) the Premises are not more than fifty percent (50%) damaged or destroyed by the casualty; (vii) Grantor delivers to Beneficiary evidence satisfactory to Beneficiary, in its reasonable discretion, that any leases relating to the Collateral cannot or will not be terminated as a result of the casualty; and (viii) the insurance proceeds shall be held by Beneficiary and disbursed as repair, restoration, replacement or

rebuilding progresses substantially in accordance with the procedures set forth in this Deed of Trust for disbursement from a replacement reserve account. Beneficiary shall not be responsible for any insurance, for the collection of any insurance proceeds, or for the insolvency of any insurer. Application of insurance proceeds by Beneficiary shall not cure nor waive any Event of Default nor invalidate any act done hereunder because of any such Event of Default. Upon foreclosure of this Deed of Trust, or in the event Beneficiary or a receiver appointed by a court of competent jurisdiction shall take possession of the Collateral, then all right, title and interest of Grantor in and to all insurance policies then in force shall inure to the benefit of and pass to Beneficiary in possession, receiver or purchaser at such sale, as the case may be. Beneficiary is hereby appointed attorney in fact for Grantor to assign and transfer such policies in the event of such a foreclosure or appointment.

(b) If the insurance proceeds are to be used for the restoration and repair of the Collateral, they shall be held by Beneficiary in a non-interest bearing account selected by Beneficiary in its reasonable discretion (the "Restoration Account"). Grantor, at its expense, shall promptly prepare and submit to Beneficiary all plans and specifications necessary for the restoration and repair of the damaged Collateral, together with evidence acceptable to Beneficiary, in its reasonable discretion, setting forth the total expenditure needed for the restoration and repair based upon a fixed price contract with a reputable builder and covered by performance and labor and material payment bonds. The plans and specifications and all other aspects of the proposed restoration and repair shall be subject to Beneficiary's reasonable approval. In the event the insurance proceeds held in the Restoration Account are insufficient to complete the restoration and repair, Grantor shall deposit in the Restoration Account an amount equal to the difference between the amount then held in the Restoration Account and the total contract price for the restoration and repair. Grantor shall proceed diligently with the restoration and repair until completed. Disbursements shall be made from the Restoration Account for the restoration and repair in accordance with a disbursement schedule, and subject to other terms and conditions, acceptable to Beneficiary, in its reasonable discretion. Disbursements from the Restoration Account shall be charged first against funds deposited by Grantor and, after such funds are exhausted, against the insurance proceeds deposited therein. In the event the amounts held in the Restoration Account exceed the cost of the restoration and repair of the damaged Collateral, the excess funds shall be disbursed to Grantor to the extent of any amounts deposited therein by Grantor. Any funds remaining after such disbursement, at Beneficiary's option, may be applied by Beneficiary to the payment of the Obligation, whether or not then due, or may be disbursed to Grantor. All funds held in the Restoration Account are hereby assigned to Beneficiary as further security for the Obligation. Beneficiary, at any time, may apply all or any part of the funds held in the Restoration Account to the curing of any Event of Default.

5.4 Grantor shall pay or cause to be paid all taxes and assessments of every kind, nature and description levied or assessed on or against the Collateral before they become delinquent and shall deliver to Beneficiary, within ten (10) days of a written request by Beneficiary, receipts showing payment of all such taxes and assessments and shall pay when due all dues and charges for water and water delivery, electricity, gas, sewers, waste removal, bills for repairs, and any and all other claims, encumbrances and expenses incident to the ownership of the Collateral.

5.5 Subject to the terms of the Loan Agreements, Beneficiary may contest, by appropriate legal proceedings, the validity of any valuation for real or personal property tax purposes or of any levy or assessment of any real or personal property taxes against the Collateral either in the name of Beneficiary or the name of Grantor or both. Grantor, upon written notice and request by Beneficiary, shall join in any such proceedings. Grantor shall cooperate with Beneficiary in any such proceeding and execute any documents or pleadings required for such purposes. Grantor shall provide Beneficiary with a copy of the Notice of Valuation within ten (10) days after receipt of a written request for same from Beneficiary received by Grantor. Grantor shall reimburse Beneficiary for all reasonable costs and legal expenses incurred by Beneficiary in connection with any such proceedings Beneficiary elects to undertake, but in no event shall such reimbursement exceed the tax savings achieved for the period covered by the Notice of Valuation. To facilitate the right of Beneficiary to contest any real or personal property tax valuation, levy, or assessment as described above, Grantor does hereby make, constitute and appoint Beneficiary, and its successors and assigns, Grantor's true and lawful attorney-in-fact, in Grantor's name, place and stead, or otherwise, to file any claim or proceeding or to take any action, either in its own name, in that of its nominee, in the name of Grantor, or otherwise, to contest any real or personal property tax valuation, levy, or assessment. The



power of attorney given herein is a power coupled with an interest and shall be irrevocable so long as any part of the Obligation remains unpaid or unperformed. Beneficiary shall have no obligation to exercise any of the foregoing rights and powers in any event.

5.6 In order to insure the payment of taxes and assessments that are now, or hereafter may be, a lien upon the Collateral, and to insure the payment of all premiums on policies of insurance required herein, Grantor, if required by Beneficiary after the occurrence and during the continuation of any Event of Default or any failure to pay taxes, assessments or insurance premiums as required herein, shall pay to Beneficiary each month, in addition to any other payments required hereunder, an amount equal to the taxes and special assessments levied or to be levied against the Collateral and the premium or premiums that will become due and payable to maintain the insurance on the Collateral, all as reasonably estimated by Beneficiary (giving due consideration to the previous year's taxes, assessments and premiums) less all deposits therefore already made, divided by the number of months remaining before one month prior to the date when the taxes, assessments and premiums become delinquent. If amounts paid to Beneficiary under the terms of this paragraph are insufficient to pay all taxes, assessments and premiums as they become due, Grantor shall pay to Beneficiary upon demand all additional sums necessary to fully pay and discharge these items. All moneys paid to Beneficiary under the terms of this paragraph may be either held by Beneficiary to pay the taxes, assessments and premiums before the same become delinquent or applied to the Obligation upon payment by Beneficiary from its own funds of the taxes, assessments and premiums. To the extent provision is not made for payment pursuant to this paragraph, Grantor shall remain obligated to pay all taxes, assessments and premiums as they become due and payable. Deposits made under this paragraph may be commingled with Beneficiary's general funds; Beneficiary shall have no liability to Grantor for interest on any such deposits.

5.7 Grantor hereby assigns, transfers and conveys to Beneficiary all compensation and each and every award of damages in connection with any condemnation for public or private use of, or injury to, the Collateral or any part thereof, to the extent of the Obligation then remaining unpaid, and all such compensation and awards shall be paid directly to Beneficiary. Beneficiary may apply all or any part of such compensation and awards to the payment of the Obligation, whether or not then due, or to the restoration or repair of the Collateral in accordance with the procedures specified in Section 5.2 above for insurance proceeds.

## **ARTICLE 6**

### **PROTECTION AND PRESERVATION OF BENEFICIARY'S INTEREST**

6.1 Grantor, by the payment of any such tax or taxes, shall protect Beneficiary against any and all loss from any taxation of indebtedness or deeds of trust (except for taxes related to interest on the Loan), direct or indirect, that may be imposed upon this Deed of Trust, the lien of this Deed of Trust on the Collateral, or upon the Obligation, by any law, rule, regulation or levy of the federal government, any state government, or any political subdivision thereof. In the event the burden of such taxation cannot lawfully be shifted from Beneficiary to Grantor, Beneficiary may declare the entire Obligation due and payable sixty (60) days after notice to Grantor.

6.2 If Grantor shall fail to pay any taxes, assessments, expenses or charges, to keep all of the Collateral free from liens and claims of liens, to maintain and repair the Collateral, make payments or perform under any lease, or to procure and maintain insurance thereon, or otherwise fail to perform as required herein, Beneficiary may advance the monies necessary to pay the same, to accomplish such maintenance and repairs, to procure and maintain such insurance or to so perform; subject to the terms of the Loan Agreements, Beneficiary is hereby authorized to enter upon the Collateral for such purposes.

6.3 Upon reasonable written request by Beneficiary, Grantor shall appear in and prosecute or defend any action or proceeding that may affect the lien or the priority of the lien of this Deed of Trust or the rights of Beneficiary hereunder and shall pay all costs, expenses (including the cost of searching title) and reasonable attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the lien or the priority of the lien of this Deed of Trust or the rights of Beneficiary. Beneficiary may pay, purchase, contest or compromise any adverse claim, encumbrance, charge or lien that in the judgment of Beneficiary appears to be prior or superior to the lien of this Deed of Trust, other than any Permitted Exceptions.

6.4 Without obtaining the prior written consent of Beneficiary, or as specifically permitted under the terms of the Loan Agreements, Grantor shall not sell, transfer, convey, lease, assign or otherwise dispose of, or further encumber, all or any part of the Collateral or any interest therein, voluntarily or involuntarily, by operation of law or otherwise.

6.5 Without obtaining the prior written consent of Beneficiary, Grantor shall not consent to, or vote in favor of, the inclusion of all or any part of the Collateral in any special improvement or similar district (a "District"). Grantor shall immediately give notice to Beneficiary of any notification or advice that Grantor may receive from any municipality or other third party of any intent or proposal to include all or any part of the Collateral in a District. Beneficiary shall have the right to file a written objection to the inclusion of all or any part of the Collateral in a District, either in its own name or in the name of Grantor, and to appear at, and participate in, any hearing with respect to the formation of any District.

6.6 All rights, powers and remedies granted Beneficiary herein, or otherwise available to Beneficiary, are for the sole benefit and protection of Beneficiary, and Beneficiary may exercise any such right, power or remedy at its option and in its sole and absolute discretion without any obligation to do so. In addition, if, under the terms hereof, Beneficiary is given two or more alternative courses of action, Beneficiary may elect any alternative or combination of alternatives, at its option and in its sole and absolute discretion. All monies advanced by Beneficiary under the terms hereof and all amounts paid, suffered or incurred by Beneficiary in exercising any authority granted herein, including reasonable attorneys' fees, shall be added to the Obligation, shall be secured by this Deed of Trust, shall bear interest at the highest rate payable on any of the Obligation until paid, and shall be due and payable by Grantor to Beneficiary immediately without demand.

6.7 Grantor, upon request of Beneficiary, shall promptly correct any material defect, error or omission that may be discovered in the content of this Deed of Trust or in the execution or acknowledgment hereof. In addition, Grantor shall do such further acts as may reasonably be necessary or that Beneficiary may reasonably request to carry out more effectively the purposes of this Deed of Trust, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the lien and security interest hereof.

6.8 Grantor hereby waives all right of homestead and any other exemption in the Collateral under state or federal law presently existing or hereinafter enacted.

## ARTICLE 7

### DEFAULTS; REMEDIES

7.1 The occurrence of any of the following events or conditions shall constitute an "Event of Default" under this Deed of Trust:

- (a) The occurrence of any Event of Default, as that term is defined in the Loan Agreements, the Notes or any of the other Loan Documents or Credit Documents.
- (b) The abandonment by Grantor of all or any part of the Property.
- (c) The existence of any encroachment upon the Property that has occurred without the approval of Beneficiary that is not removed or corrected within thirty (30) days after its creation.
- (d) The demolition or destruction of, or any substantial damage to, any portion of the Property that is not adequately covered by insurance, or the loss, theft or destruction of, or any substantial damage to, any portion of the Personal Property or any other collateral or security for the Obligation, that is not adequately covered by insurance.

7.2 Upon the occurrence and during the continuation of any Event of Default, Beneficiary may do one or more of the following:

(a) Declare the entire Obligation to be immediately due and payable, and the same, with all costs and charges, shall be collectible and thereupon, become immediately due and payable without any further presentment, demand, protest or notice of any kind being required.

(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 and if directed by Beneficiary, Trustee, without demand on Grantor, except as provided by law, may sell the Collateral 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 Beneficiary may determine (but subject to any statutory right of Grantor to direct the order in which the Collateral, 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. In every such case, notice or postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale or as otherwise provided by law. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in the Trustee's Deed of any matters or facts relating to the exercise of the power of sale and the sale of the Collateral shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and attorney fees and costs; (b) all sums expended or advanced by Beneficiary in conjunction with any provisions of this Deed of Trust, not then repaid, with accrued interest thereon from the date of expenditure, at the default rate of interest provided in the Loan Agreements; (c) all sums then secured by this Deed of Trust, including interest and principal on the Notes; and (d) 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 Clerk of the District Court of Salt Lake County, Utah. Notwithstanding the foregoing, Beneficiary shall have the option to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all reasonable costs and expenses incident thereto, including reasonable attorneys' fees and costs, in such amounts as shall be fixed by the court.

(c) Exercise all rights of a secured party under the Uniform Commercial Code with respect to the Personal Property, including, without limitation, taking possession of, holding, and selling the Personal Property and enforcing or otherwise realizing upon any accounts and general intangibles. Any requirement for reasonable notice of the time and place of any public sale, or of the time after which any private sale or other disposition is to be made, will be satisfied by Beneficiary's giving of such notice to Grantor at least ten (10) days prior to the time of any public sale or the time after which any private sale or other intended disposition is to be made.

(d) Exercise all rights of Beneficiary as set forth in the Assignment of Rents.

(e) Apply any funds in the possession or control of Beneficiary under the provisions of Section 5.7 hereof to the payment of the Obligation, in lieu of the purposes specified in that paragraph.

(f) Subject to applicable law, be entitled, as a matter of absolute right and without regard to the value of any security for the Obligation or the solvency of any person liable therefor, to the appointment of a receiver for the Collateral upon *ex parte* application to any court of competent jurisdiction. Grantor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and his agents shall be empowered (a) to take possession of the Collateral and any businesses conducted by Grantor or any other person thereon and any business assets used in connection therewith and, if the receiver reasonably deems it appropriate, to operate the same, (b) to exclude Grantor and Grantor's agents, servants, and employees from the Collateral, (c) to collect the rents, issues, profits, and income therefrom pursuant to applicable law, (d) to complete any construction which may be in progress, and for purposes thereof, draw additional advances under the Loan for the purpose of completing construction of the Project, all of which shall constitute a part of the Obligation, (e) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (f) to use all stores of materials, supplies, and maintenance

equipment on the Collateral and replace such items at the expense of the receivership estate, (g) to pay all taxes and assessments against the Collateral and the Personal Property, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, and (h) generally to do anything which Grantor could legally do if Grantor were in possession of the Collateral. All expenses incurred by the receiver or his agents shall constitute a part of the Obligation. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Beneficiary, together with interest thereon in accordance with the Notes from the date incurred until repaid, and the balance shall be applied toward the Obligation or in such other manner as the court may direct. Unless sooner terminated with the express consent of Beneficiary, any such receivership will continue until the Obligation has been discharged in full, or until title to the Collateral has passed after foreclosure sale and all applicable periods of redemption have expired.

(g) Without regard to the adequacy of any security for the Obligation or the solvency of Grantor or any other person or entity, enter upon and take possession of all or any part of the Collateral, either in person or by agent or employee, or by a receiver appointed by a court of competent jurisdiction; Grantor shall on demand peaceably surrender possession of the Collateral to Beneficiary. Beneficiary, in its own name or in the name of Grantor, may operate and maintain all or any part of the Collateral to such extent as Beneficiary deems advisable, may rent and lease the same to such persons, for such periods of time, and on such terms and conditions as Beneficiary in its reasonable discretion may determine, and may sue for or otherwise collect any and all rents, including those past due and unpaid. In dealing with the Collateral as a Beneficiary in possession, Beneficiary shall not be subject to any liability, charge, or obligation therefor to Grantor, other than for gross negligence or willful misconduct, and shall be entitled to operate any business then being conducted or which could be conducted thereon or therewith at the expense of and for the account of Grantor (and all net losses, costs and expenses thereby incurred shall be advances governed by Section 6.6 hereof), to the same extent as the owner thereof could do, and to apply the rents to pay the receiver's expenses, if any, for the operation of the Collateral and then in the manner provided in the Assignment of Rents.

(h) To the extent that Grantor remains in possession of the Collateral after the Collateral is sold as provided above, or Beneficiary otherwise becomes entitled to possession of the Collateral upon default of Grantor, Grantor shall become a tenant at sufferance of Beneficiary or the purchaser of the Collateral and shall, at Beneficiary's option, either (1) pay a reasonable rental for the use of the Collateral, or (2) vacate the Collateral immediately upon the demand of Beneficiary. This clause shall survive any termination of this Deed of Trust by foreclosure or otherwise and any rents owed Beneficiary or expenses incurred by Beneficiary under this Section 8.2(h), including attorneys' fees, whether before or after foreclosure, shall be added to the Obligation as an expense payable by Grantor. This is in addition to, and not in limitation of, any other remedies available to Beneficiary by law, under this Deed of Trust, or under the other Loan Documents or Credit Documents.

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

7.4 In addition to any remedies provided herein for an Event of Default, Beneficiary shall have all other legal or equitable remedies allowed under applicable law. No failure on the part of Beneficiary to exercise any of its rights hereunder arising upon any Event of Default shall be construed to prejudice its rights upon the occurrence of any other or subsequent Event of Default. No delay on the part of Beneficiary in exercising any such rights shall be construed to preclude it from the exercise thereof at any time while that Event of Default is continuing. Beneficiary may enforce any one or more remedies or rights hereunder successively or concurrently. By accepting payment or performance of any of the Obligation after its due date, Beneficiary shall not thereby waive the agreement contained herein that time is of the essence, nor shall Beneficiary waive either its right to require

prompt payment or performance when due of the remainder of the Obligation or its right to consider the failure to so pay or perform an Event of Default. In any action by Beneficiary to recover a deficiency judgment for any balance due under the Notes upon the foreclosure of this Deed of Trust or in any action to recover the Obligation secured hereby, and as a material inducement to making the loan evidenced by the Notes, Grantor acknowledges and agrees that the successful bid amount made at any foreclosure sale, if any, shall be conclusively deemed to constitute the fair market value of the Premises, that such bid amount shall be binding against Grantor in any proceeding seeking to determine or contest the fair market value of the Premises and that such bid amount shall be the preferred alternative means of determining and establishing the fair market value of the Premises. To the extent permitted by law, Grantor hereby waives and relinquishes any right to have the fair market value of the Premises determined by a judge or jury in any action seeking a deficiency judgment or any action on the Obligation secured hereby.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 The acceptance of this Deed of Trust by Beneficiary shall not be considered a waiver of or in any way to affect or impair any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the payment or performance of the Obligation, nor shall the taking by Beneficiary at any time of any such additional security be construed as a waiver of or in any way to affect or impair the security of this Deed of Trust; Beneficiary may resort, for the payment or performance of the Obligation, to its several securities therefor in such order and manner as it may determine.

8.2 Without notice or demand, without affecting the obligations of Grantor hereunder or the personal liability of any person for payment or performance of the Obligation, and without affecting the lien or the priority of the lien of this Deed of Trust, Beneficiary, from time to time, may: (i) extend the time for payment of all or any part of the Obligation, accept any renewal note therefor, reduce the payments thereon, release any person liable for all or any part thereof, or otherwise change the terms of all or any part of the Obligation; (ii) take and hold other security for the payment or performance of the Obligation and enforce, exchange, substitute, subordinate, waive or release any such security; (iii) consent to the making of any map or plat of the Collateral; (iv) join in granting any easement on or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Collateral; (v) join in any extension or subordination agreement; or (vi) direct Trustee to release any part of the Collateral from this Deed of Trust. Any such action by Beneficiary, or Trustee at Beneficiary's direction, may be taken without the consent of any junior lienholder and shall not affect the priority of this Deed of Trust over any junior lien.

8.3 To the extent permitted by applicable law, Grantor waives and agrees not to assert: (i) any right to require Beneficiary to proceed against any guarantor, to proceed against or exhaust any other security for the Obligation, to pursue any other remedy available to Beneficiary, or to pursue any remedy in any particular order or manner; (ii) the benefits of any legal or equitable doctrine or principle of marshalling; (iii) the benefits of any statute of limitations affecting the enforcement hereof; (iv) demand, diligence, presentment for payment, protest and demand, and notice of extension, dishonor, protest, demand and nonpayment, relating to the Obligation; and (v) any benefit of, and any right to participate in, any other security now or hereafter held by Beneficiary.

8.4 Beneficiary shall have the right to inspect the Collateral at all reasonable times after the provision of reasonable advanced notice (except in the case of an emergency when no advanced notice shall be required).

8.5 Time is of the essence hereof. If more than one Grantor is named herein, the word "Grantor" shall mean all and any one or more of them, severally and collectively. All liability hereunder shall be joint and several. This Deed of Trust shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, personal representatives, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledgees, of the Notes. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

8.6 This Deed of Trust cannot be changed except by agreement, in writing, signed by Grantor and Beneficiary.

8.7 No setoff or claim that Grantor now has or may in the future have against Beneficiary shall relieve Grantor from paying or performing the Obligation.

8.8 Each term, condition and provision of this Deed of Trust shall be interpreted in such manner as to be effective and valid under applicable law but if any term, condition or provision of this Deed of Trust shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid term, condition or provision had not been contained herein.

8.9 This Deed of Trust, the Obligation and the agreements of any person or entity to pay or perform the Obligation and all claims or controversies arising out of or relating to this Deed of Trust shall be governed by and construed according to the laws of the State of Colorado, without giving effect to conflict of laws principles which might otherwise require the application of the laws of another jurisdiction, provided, however, that with respect to the creation, perfection, priority and enforcement of the lien of this Deed of Trust, and the determination of deficiency judgments, the laws of the State of Utah shall apply. Venue for all actions arising from this Deed of Trust shall be in the District Court in and for the County of Arapahoe, State of Colorado or the county and State in which the Collateral is located. The parties hereto waive any objection which either may have based on lack of jurisdiction or improper venue or forum non conveniens to any suit or proceeding instituted by either party under this Deed of Trust in any state or federal court with jurisdiction over the County of Arapahoe, State of Colorado, or the county and State where the Collateral is located, and consent to the granting of such legal or equitable relief as is deemed appropriate by such court.

8.10 All notices required or permitted to be given hereunder shall be in writing and may be given in person, by United States mail or by delivery service with a nationally recognized carrier. Any notice directed to a party to this Deed of Trust shall become effective upon the earliest of the following: (i) actual receipt by that party; (ii) delivery to the designated address of that party, addressed to that party; or (iii) if given by certified or registered United States mail, two days after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Deed of Trust or such other address as that party, from time to time, may specify by notice to the other parties. Any notice to Beneficiary or Grantor shall be sent to the address set forth on page one of this Deed of Trust.

8.11 As further security for the payment and performance of the Obligation, Beneficiary shall be subrogated to the lien, although released of record, of any and all encumbrances paid from the proceeds of any loan included in the Obligation.

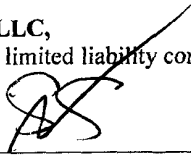
8.12 THE UNDERSIGNED AND BENEFICIARY (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND BENEFICIARY ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT OR ANY OTHER AGREEMENTS, DOCUMENTS OR INSTRUMENTS EXECUTED OR DELIVERED IN CONNECTION WITH, OR OTHERWISE RELATING TO, THE OBLIGATION (TOGETHER WITH THIS DEED OF TRUST, THE "RELATED DOCUMENTS") OR ANY RELATIONSHIP BETWEEN THE UNDERSIGNED AND BENEFICIARY. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER RELATED DOCUMENTS.

[Signature Page to Follow]

IN WITNESS WHEREOF, this Deed of Trust is hereby executed on the date set forth below to be effective as of the date indicated above.

GRANTOR

SETS RE LLC,  
a Delaware limited liability company

By:   
Simon Shaner, Manager

STATE OF UTAH )  
COUNTY OF SALT LAKE ) ss

Acknowledged before me this 14<sup>th</sup> day of OCTOBER, 2019, by Simon Shaner, Manager of SETS RE LLC, a Delaware limited liability company, on behalf of the company.

Witness my hand and official seal.  
My commission expires: 08-27-2023

  
Notary Public

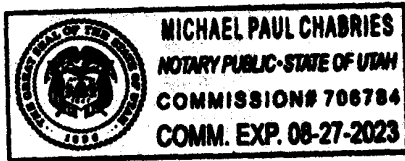


Exhibit A

Legal Description

**EXHIBIT A - DESCRIPTION OF COTTONWOOD PROPERTY**

PARCEL 1:

Beginning at a point which is North 00°08'51" East 540.34 feet along the section line and East 1725.01 feet from the West quarter corner of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian, said point being on the Northerly line of the land conveyed to Blue Cross and Blue Shield of Utah, a Utah corporation, in that certain Special Warranty Deed recorded January 17, 1996 as Entry No. 6259077 in Book 7311 at Page 849 of the official records of the Salt Lake County Recorder and running thence North 52°29'23" East 86.73 feet; thence North 79°12'42" East 119.00 feet; thence North 57°53'55" East 100.26 feet to a point on the centerline of Big Cottonwood Creek; thence along said centerline the following five (5) courses: South 10°59'32" East 138.07 feet, South 20°59'32" East 62.73 feet, South 50°00'00" East 95.00 feet, South 60°00'00" East 32.21 feet, and South 49°55'31" East 50.66 feet; thence leaving said creek centerline South 42°42'26" West 164.67 feet to a point on the centerline of Cottonwood Parkway (a private road), said centerline being the Northerly line of the aforementioned Blue Cross and Blue Shield of Utah property; thence along the centerline of said Cottonwood Parkway the following three (3) courses: North 77°30'44" West 27.42 feet to a point on a 330.00 foot radius curve to the right (radius bears North 12°29'16" East), thence along said curve 230.39 feet, thence North 37°30'37" West 213.48 feet to the point of beginning.

PARCEL 1A:

Rights of way and easements appurtenant to such real property set forth in the Declaration of Easements, Covenants and Restrictions, recorded January 17, 1996 as Entry No. 6259074 in Book 7311 at Page 821 of the official records, as amended by (i) the First Amendment to Declaration of Easements, Covenants and Restrictions, recorded July 3, 1996 as Entry No. 6398547 in Book 7437 at Page 265 of the official records, (ii) the Second Amendment to Declaration of Easements, Covenants and Restrictions, recorded May 2, 1997 as Entry No. 6635821 in Book 7658 at Page 2663 of the official records, and (iii) the Third Amendment to Declaration of Easements, Covenants and Restrictions, recorded July 22, 1997 as Entry No. 6696564 in Book 7716 at Page 980 of the official records, and (iv) the Fourth Amendment to Declaration of Easements, Covenants and Restrictions, recorded November 12, 1998 as Entry No. 7152537 in Book 8160 at Page 1199 of the official records, and (v) the Fifth Amendment to Declaration of Easements, Covenants and Restrictions, recorded February 25, 2004 as Entry No. 8987987 in Book 8950 at Page 2021 of the official records.

PARCEL 2:

Lot 2, COTTONWOOD CORPORATE CENTER SUBDIVISION, according to the official plat thereof, filed in Book 2004P of Plats at Page 45 of the official records of the Salt Lake County Recorder.



**Exhibit B**

**Permitted Exceptions**

1. Taxes for the year 2019 are a lien now due and payable in the amount of \$30,009.58 but will not become delinquent until November 30, 2019 under Parcel No. 22-23-178-012. (affects Parcel 1).
2. Taxes for the year 2019 are a lien now due and payable in the amount of \$15,213.86 but will not become delinquent until November 30, 2019 under Parcel No. 22-23-178-013. (affects Parcel 1)
3. Taxes for the year 2019 are a lien now due and payable in the amount of \$20,804.93 but will not become delinquent until November 30, 2019 under Parcel No. 22-23-179-009. (affects Parcel 2)
4. The herein described Land is located within the boundaries of Cottonwood Heights City, South Salt Lake Valley Mosquito Abatement District, Cottonwood Improvement District, Central Utah Water Conservancy District, Wasatch Waste And Recycle District, and is subject to any and all charges and assessments levied thereunder. (affects part of Parcel 1)
5. The herein described Land is located within the boundaries of Cottonwood Heights City, South Salt Lake Valley Mosquito Abatement District, Cottonwood Improvement District, Central Utah Water Conservancy District, Wasatch Waste And Recycle District, Cottonwood Corporate Center Economic Development Plan, and is subject to any and all charges and assessments levied thereunder. (affects part of Parcel 1)
6. The herein described Land is located within the boundaries of Cottonwood Heights City, South Salt Lake Valley Mosquito Abatement District, Mt. Olympus Improvement District, Central Utah Water Conservancy District, Wasatch Waste And Recycle District, Cottonwood Corporate Center Economic Development Plan, and is subject to any and all charges and assessments levied thereunder. (affects Parcel 2)
7. Right of Way for Big Cottonwood Creek, and any facilities appurtenant thereto, including but not limited to, water pipelines and ditches, as the same may be found to intersect the herein described Land, together with any rights or asserted rights in and to said Creek or pertaining to the use and maintenance of said Creek. The Company further excepts any adverse claim based on (i) the assertion that some of the boundaries of the herein described Land have been affected by a change in the course of said Creek; (ii) the uncertainty of the boundaries of said Creek; and (iii) the assertion that the Land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
8. Right of Way for Heughs Creek (which may also be known as Heughs Canyon Creek), and any facilities appurtenant thereto, including but not limited to, water pipelines and ditches, as the same may be found to intersect the herein described Land, together with any rights or asserted rights in and to said Creek or pertaining to the use and maintenance of said Creek. The Company further excepts any adverse claim based on (i) the assertion that some of the boundaries of the herein described Land have been affected by a change in the course of said Creek; (ii) the uncertainty of the boundaries of said Creek; and (iii) the assertion that the Land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
9. Right of Way for "Upper Canal" (which may also be known as the "Big Cottonwood Upper Canal" and/or the "Race-Way Canal"), and any facilities appurtenant thereto, including but not limited to, water pipelines and ditches, as the same may be found to intersect the herein described Land, together with any rights or asserted rights in and to said Canal or pertaining to the use and maintenance of said Canal. The Company further excepts any adverse claim based on (i) the assertion that some of the boundaries of the herein described Land have been affected by a change in the course of said Canal; (ii) the uncertainty of the boundaries of said Canal; and (iii) the assertion that the Land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.

10. The following restriction set forth in that certain Warranty Deed recorded May 27, 1925 as Entry No. 535251 in Book "12-G" of Deeds at Page 573 of the official records, wherein Rudolph Knudsen is the Grantor and Annie Oar is the Grantee, to-wit: "It is distinctly understood and agreed, by and between the parties hereto, that said Land , or any part thereof, is not to be used for any public use as a dance hall." (affects Parcel 1)
11. Pole Line Easement in favor of Utah Power & Light Company, its successors and assigns for the erection and continued maintenance, repair, alteration, and replacement of electric transmission, distribution, and telephone circuits, and 2 guy anchors and 2 poles, with the necessary guys, stubs, cross-arms and other attachments thereon, of affixed thereto, for the support of said circuits, together with other terms and conditions and incidental purposes, by instrument dated June 1, 1965 and recorded September 1, 1965, as Entry No. 2107856, in Book 2371, at Page 198. (affects Parcel 2)
12. Grant of Easement for Construction and Maintenance of Storm Sewer Pipeline in favor of Salt Lake County for a right of way and easement 40 feet in width for purposes of constructing and maintaining an underground storm drain and incidental purposes, by instrument dated February 2, 1995 and recorded February 8, 1995, as Entry No. 6019037, in Book 7099, at Page 400. (affects Parcel 1)
13. Terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in that certain Declaration of Easements, Covenants and Restrictions [Cottonwood Corporate Center] recorded January 17, 1996 as Entry No. 6259074 in Book 7311 at Page 821, but omitting any covenant, condition or restriction, if any, based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that the covenant, condition or restriction (a) is exempt under Title 42 of the United States Code, or (b) relates to handicap, but does not discriminate against handicapped persons.
 

First Amendment to Declaration of Easements, Covenants and Restrictions [Cottonwood Corporate Center], recorded July 30, 1996 as Entry No. 6398547 in Book 7437 at Page 265.

Second Amendment to Declaration of Easements, Covenants and Restrictions [Cottonwood Corporate Center], recorded May 2, 1997 as Entry No. 6635821 in Book 7658 at Page 2663.

Third Amendment to Declaration of Easements, Covenants and Restrictions [Cottonwood Corporate Center], recorded July 22, 1997 as Entry No. 6696564 in Book 7716 at Page 980.

Fourth Amendment to Declaration of Easements, Covenants and Restrictions [Cottonwood Corporate Center], recorded November 12, 1998 as Entry No. 7152537 in Book 8160 at Page 1199.

Fifth Amendment to Declaration of Easements, Covenants and Restrictions [Cottonwood Corporate Center], recorded February 25, 2004 as Entry No. 8987987 in Book 8950 at Page 2021.

Assignment and Assumption of Manger's Rights by and between Cotnet Investments, L.C. (f/k/a Wallnet Investments, L.C.) a Utah limited liability company and NOP Cottonwood Holdings LLC, a Delaware limited liability company, recorded November 17, 2005 as Entry No. 9556832 in Book 9218 at Page 6904.

Assignment and Assumption of Manger's Rights by and between NOP Cottonwood Holdings LLC, a Delaware limited liability company and HGREIT II Cottonwood Center LLC, a Delaware limited liability company, recorded July 5, 2016 as Entry No. 12314636 in Book 10449 at Page 3035.
14. Right of Way and Easement Grant, in favor of Mountain Fuel Supply Company, to lay, maintain, operate, repair, inspect, protect, remove and replace pipe lines, valves, valve boxes, and other gas transmission and distribution facilities and incidental purposes, through and across a portion of the subject Land. Said Right of Way and Easement Grant recorded January 17, 1996, as Entry No. 6259076, in Book 7311, at Page 846.
 

Right of Way and Easement Grant modified and affected by that certain Quitclaim Deed, recorded July 23, 1998 as Entry No. 7035643 in Book 8044 at Page 970

15. Secondary Access Easement by and among Wallnet Investments, L.C., a Utah limited liability company, R.W. Sims, Rowell W. Sims and David J. Sims, as trustees of the R.W. Sims Revocable Trust, under an Amended and Restated Trust Agreement dated August 24, 1995, and Rowell W. Sims and Carolyn A. Sims, dated July 23, 1997 and recorded August 14, 1997 as Entry No. 6713675 in Book 7733 at Page 486.
16. Easement Deed in favor of R.W. Sims (sometimes known as Royal William Sims), Rowell W. Sims and David J. Sims, as trustees of the R.W. Sims Revocable Trust under an Amended and Restated Trust Agreement dated August 24, 1995 for a nonexclusive easement for utility purposes and incidental purposes, by instrument dated August 8, 1997 and recorded August 14, 1997, as Entry No. 6713676, in Book 7733, at Page 503. (affects Parcel 1).
17. Second Amendment to Purchase and Sale Agreement between Wallnet Investments, L.C., a Utah limited liability company and BWB Properties, Inc., a Utah corporation, dated August 8, 1997 and recorded August 14, 1997 as Entry No. 6713679 in Book 7733 at Page 527. (affects Parcel 1) Waiver of Obligation to Relocate Drainage Pipe in favor of Wallnet Investments, L.C., a Utah limited liability company, recorded November 12, 1998 as Entry No. 7152541 in Book 8160 at Page 1257.
18. Covenant to Construct Wall by BWB Properties, Inc., a Utah corporation in favor of Wallnet Investments, L.C., a Utah limited liability company, recorded August 14, 1997 as Entry No. 6713680 in Book 7733 at Page 537.
19. Parking Agreement between 2855 E. Cottonwood Parkway, L.C., a Utah limited liability company and BWB Properties, Inc., a Utah Corporation, dated August 8, 1997 and recorded August 14, 1997 as Entry No. 6713681 in Book 7733 at Page 541.  
  
Amendment to Parking Agreement, dated November 12, 1998 and recorded November 12, 1998 as Entry No. 7152540 in Book 8160 at Page 1246.
20. Ordinance No. 1399 Adopting the Cottonwood Corporate Center Project Area Redevelopment Plan Entitled "Cottonwood Corporate Center Economic Development Plan, as Amended", dated February 20, 1997 and recorded November 28, 1997 as Entry No. 6801932 in Book 7818 at Page 2995.
21. Grant of Easement by Market Street Cottonwoods, L.L.C., a Utah limited liability company in favor of Wallnet Investments, L.C., a Utah limited liability company, dated November 12, 1998 and recorded November 12, 1998 as Entry No. 7152539 in Book 8160 at Page 1237.
22. Easement in favor of Salt Lake County, a body politic of the State of Utah for a permanent easement for a public highway and all incidental purposes (including, but not limited to, that of allowing utility, sewer and drainage facilities to be located, serviced, repaired and maintained within the perimeters of the dedicated easement area) on, under, over and across said Land and incidental purposes, by instrument dated March 31, 2000 and recorded June 5, 2000, as Entry No. 7652671, in Book 8366, at Page 173. (affects Parcel 2)
23. Easement in favor of Salt Lake City Corporation, a municipal corporation of the State of Utah for the construction, operation, and continued maintenance, repair, alteration, inspection and replacement, of a 12-inch culinary water line, together with all facilities attendant thereto, including any and all service lines, valves, and other related equipment and improvements and incidental purposes, by instrument dated August 29, 2000 and recorded October 26, 2000, as Entry No. 7746982, in Book 8396, at Page 8931. (affects Parcel 2)
24. Easement in favor of Salt Lake City Corporation, a municipal corporation of the State of Utah for the construction, operation, and continued maintenance, repair, alteration, inspection and replacement, of a 12-inch culinary water line, together with all facilities attendant thereto, including any and all service lines, valves, and other related equipment and improvements and incidental purposes, by instrument dated August

25, 2000 and recorded October 26, 2000, as Entry No. 7746983, in Book 8396, at Page 8935. (affects Parcel 2)

25. Easements, notes, recitals and restrictions as shown on the recorded plat for Cottonwood Corporate Center Subdivision, recorded February 25, 2004 as Entry No. 8987990 in Book 2004P of Plats at Page 45 in the office of the Salt Lake County Recorder.
26. Storm Sewer Easement in favor of Mountain America Federal Credit Union, a Utah corporation to lay, maintain, operate, repair, inspect, remove and replace an underground storm sewer drainage line through and across said Land and incidental purposes, by instrument recorded February 25, 2004, as Entry No. 8987993, in Book 8950, at Page 2039. (affects Parcel 2)
27. Easement Agreement by Market Street Cottonwoods, L.L.C., a Utah limited liability company and Cottonwood Heights, a Utah municipality to construct, re-construct, install, maintain, use and operate (for public trail purposes), inspect and repair a public trail, recorded July 8, 2008 as Entry No. 10473530 in Book 9624 at Page 9344.
28. Trust Deed with Assignment of Rents to secure an indebtedness in the amount shown below, and any other obligations secured thereby: Trustor: WallNet Investments, L.C., a Utah limited liability company; Trustee: Backman Stewart Title Company; Beneficiary: The Savage Companies, a Utah corporation; Amount: \$3,823,623.50; Dated: March 27, 1995; Recorded: March 27, 1995 as Entry Number 6048832 in Book 7123 at Page 107. (affects Parcel 2)

First Amendment to Trust Deed, with Partial Reconveyance, dated January 10, 1996 and recorded January 17, 1996 as Entry No. 6259071 in Book 7311 at Page 804.

The beneficial rights and interest of The Savage Companies in and to said Trust Deed were assigned to Zions First National Bank by an Assignment of Trust Deed recorded March 27, 1995 as Entry No. 6048833 in Book 7123 at Page 119 of the official records.

NOTE: Said Assignment is given to secure an indebtedness in the original amount of \$4,700,000.00, evidenced by a Promissory Note dated March 31, 1993, in which Newco Corporation appears as maker and Zions First National Bank appears as payee.

First Amendment to Assignment of Trust Deed, dated January 12, 1996 and recorded January 17, 1996 as Entry No. 6259072 in Book 7311 at Page 811.

Substitution of Trustee naming Landmark Title Company, Successor Trustee, dated July 12, 1996, and recorded August 9, 1996, as Entry No. 6425879, in Book 7462, at Page 1257.

Terms and conditions of that certain Subordination Agreement by EsNET Ltd., a Utah limited partnership, The Savage Companies, a Utah corporation and Zions First National Bank, a national banking association, dated July 25, 1996 and recorded August 9, 1996 as Entry No. 6425871 in Book 7462 at Page 1164 of Official Records.

The effects of the Release of Assignment of Trust Deed by Zions First National Bank, dated January 14, 2002 and recorded January 31, 2002 as Entry No. 8137172 in Book 8561 at Page 1979. The effects, if any, of the Release of Trust Deed with Assignment of Rents by Zions First National Bank, dated January 14, 2002 and recorded January 31, 2002 as Entry No. 8137174 in Book 8561 at Page 1984.

29. Deed of Trust and Fixture Filing to secure an indebtedness in the amount shown below, and any other obligations secured thereby: Trustor: Market Street Cottonwoods, L.L.C., a Utah limited liability company, as to Parcel 1; and Market Street Cottonwoods, L.L.C., as to Parcel 2; Trustee: ZB, N.A. dba Zions First National Bank; Beneficiary: ZB, N.A. dba Zions First National Bank; Amount: \$4,500,000.00; Dated: January 5, 2018; Recorded: January 8, 2018 as Entry Number 12693947 in Book 10636 at Page 7738.

30. Assignment of Rents recorded January 8, 2018 as Entry No. 12693948 in Book 10636, at Page 7759, as additional security for the payment of the indebtedness secured by said Deed of Trust.
31. Hazardous Substances Certificate and Indemnity Agreement among Market Street Cottonwoods, L.L.C.; Market Street Cottonwoods, L.L.C.; Gastronomy, Inc., Riverpark M.S. Grill, LLC, TTJ Partners, LLC, The Thomas L. Guinney Alaska Irrevocable Trust and Thomas L. Guinney; and ZB, N.A. dba Zions First National Bank, dated January 5, 2018 and recorded January 8, 2018 as Entry No. 12693949 in Book 10636 at Page 7777.
32. An unrecorded lease dated February 25, 2004 by and between Market Street Cottonwoods, L.L.C., a Utah limited liability company (Landlord) and Gastronomy, Inc., a Utah corporation (Tenant), as disclosed in that certain Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate recorded January 8, 2018 as Entry No. 12693950 in Book 10636 at Page 7796 of official records.
33. Rights of tenant(s) in the Land, if any, and rights of all parties claiming by, through or under said tenant(s).
34. Any claim that the Title is subject to a trust or lien created under The Perishable Agricultural Commodities Act (7 U.S.C. §§499a, et seq.) or the Poultry and Stockyards Act (7 U.S.C. §§181 et seq.) or under similar state laws.
35. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records.
36. Subject to the following matters disclosed on that certain survey prepared by Terramark, having been certified under the date of July 8, 2019, last revised October 9, 2019, as Job No. 19-05-02-29003, by Michael A. Hoffmann, a Professional Land Surveyor holding License No. 6865308:
  - a. Back of sidewalk extends up to 1.8 feet Westerly into the right-of-way
  - b. Building extends up to 3.8 feet Southerly into the 50 foot front setback
  - c. Building extends up to 4.1 feet Southerly into an easement recorded as Entry No. 6019037 in Book 7311 at Page 846
  - d. Building extends up to 12.59 feet Southerly into an easement recorded as Entry No. 6259076 in Book 7311 at Page 846
  - e. Building appears to encroach into "approximate flood lines"
37. Memorandum of Private Water Main Agreement recorded July 23, 2019 as Entry No. 13035383 in Book 10806 at Page 7417.