



\*W3037954\*

E# 3037954 PG 1 OF 25  
Leann H. Kilts, WEBER COUNTY RECORDER  
28-Feb-20 0157 PM FEE \$40.00 DEP TN  
REC FOR: THOMAS TITLE & ESCROW  
ELECTRONICALLY RECORDED

When recorded, mail to:

Roxann Gallagher  
Sacks Tierney P.A.  
4250 N. Drinkwater Boulevard, 4th Floor  
Scottsdale, Arizona 85251

Tax I.D.: 09-102-0007

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

This Deed of Trust, Assignment of Rents, Security Agreement, and Financing Statement (this “**Deed of Trust**”) is made February 28, 2020, by BG ROY FITNESS, LLC, an Arizona limited liability company, with a mailing address of 2390 East Camelback Road, Suite 200, Phoenix, Arizona 85016 (“**Trustor**”), to MOUNTAIN VIEW TITLE AND ESCROW, INC., a Utah coporation, with a mailing address of 365 West 1550 North, Suite A, Layton, Utah 84041, as trustee (“**Trustee**”), for the benefit of ACADEMY BANK, N.A., a national banking association, with a mailing address of 1111 Main Street, Suite 202, Kansas City, Missouri 64105 (“**Beneficiary**”).

**I. SECURED OBLIGATIONS.** This Deed of Trust is given in consideration of and as security for: (a) the payment of a loan from Beneficiary to Trustor evidenced by that Promissory Note of even date herewith executed by Trustor (the “**Trustor**”) and payable to the order of Beneficiary for the original principal amount of \$5,598,905 (the “**Note**”), together with interest thereon and charges with respect thereto and any and all advances now or hereafter made by Beneficiary under the terms and conditions of the Note, that certain Loan Agreement, dated as of the date hereof (the “**Loan Agreement**”), by Beneficiary and Trustor, or this Deed of Trust, and any and all renewals, replacements, amendments, modifications, or extensions of the Note, the Loan Agreement, or this Deed of Trust; (b) all of the terms, conditions, agreements, stipulations, covenants, and provisions of this Deed of Trust, the Loan Agreement, and any other agreement, document, or instrument (and any and all renewals, replacements, amendments, modifications, or extensions thereof), including all Loan Documents (but excluding the Environmental Indemnity Agreement), given by Trustor to Beneficiary to evidence or to secure the indebtedness secured hereby; and (c) all late charges, default interest, prepayment charges or premiums, loan fees, commitment fees, extension fees, costs to cure, and other fees, costs, and expenses of any nature described in the Note or the Loan Agreement and all costs of collecting the indebtedness or other amounts evidenced by the Note or described in this Deed of Trust or the Loan Agreement, including any and all costs and expenditures of a receiver in possession and reasonable attorneys’

fees. This Deed of Trust shall also secure the payment and performance of any additional loans that may hereafter be made by Beneficiary to Trustor that are evidenced by a promissory note or notes or other writings expressly stating that they are secured by this Deed of Trust. All of the foregoing payments and performances secured by this Deed of Trust are, collectively, the “**Obligation.**”

## II. LIENS, SECURITY INTERESTS, AND ASSIGNMENTS.

**2.1 Grant of Lien and Security Interest.** For the consideration of \$1.00, or such portion thereof as may hereafter be advanced to or for the benefit of Trustor, Trustor hereby irrevocably conveys, transfers, pledges, and assigns to Trustee, in trust, with power of sale, and grants to Beneficiary a first priority security interest in, all of Trustor’s present and future right, title, and interest, if any, in and to all of the following property (all of Trustor’s property encumbered by this Deed of Trust is referred to herein severally and collectively as the “**Property**”):

(a) The land described on Exhibit A hereto (together with all land that from time to time, by lease or otherwise, may be expressly made subject to this Deed of Trust and all estates and development rights hereafter acquired by Trustor for use in connection with such land, the “**Real Property**”), and all development rights relating thereto;

(b) All present and future tenements, hereditaments, easements, rights, leases (whether written or oral, or for a definite term or month-to-month), together with all income, receipts, revenues, rents, issues, and profits now or hereafter arising therefrom, or from the Real Property, including the Lease Guaranty and all other guaranties of leases, letters of credit, subleases, licenses, benefits, privileges, permits, water, water rights, rights of way, fences, and appurtenances belonging or in any way appurtenant to, the Real Property or any portion thereof, or any improvements or development thereon and all remainders, rents, issues, and profits thereof;

(c) All buildings and above ground and underground improvements, structures, and fixtures now or hereafter erected on, or attached to, the Real Property or any portion thereof (collectively, the “**Improvements**”);

(d) To the extent permitted by law, all present and future licenses, permits, approvals, and agreements from or with any governmental or quasi-governmental agency or entity or any other person relevant to the zoning, subdivision, division, development, improvement, use, lease, sale, or other disposition of the Real Property or any portion thereof, or any buildings or improvements now or hereafter erected, placed, or located on the Real Property or any portion thereof;

(e) To the extent permitted by the applicable agreements, all present and future plans, specifications, drawings, analyses, surveys, reports, and other design products, relating to all present and future buildings and tenant and other improvements (including landscaping) constructed on the Real Property or any portion thereof, and all rights in and to all architectural and engineering contracts, construction management agreements, construction contracts, surety bonds, warranties, land use plans, studies, building contracts, soils reports,

appraisals, feasibility and market studies, management agreements, consulting agreement, operating agreements, service contracts, development contracts, design and sign design contracts, space planning contracts, and any other agreements with respect to planning, designing, developing, or inspecting the Real Property or any portion thereof and any improvements or construction thereon, including the right to maintain signage with respect to the Real Property or any business conducted thereon, whether or not appurtenant to the Real Property, together with any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(f) All of the beneficial interest of Trustor in any holding trust, if title or any interest of Trustor in the Real Property is vested in or held by a trustee, and all rights to further encumber the Real Property or any portion thereof or any interest therein for debt;

(g) To the extent permitted by the applicable agreements, all present and future water service and wastewater capacity reservation agreements and security agreements, and all other present and future contracts, agreements, books, and records relating to the development, improvement, use, leasing, sale, disposition, operation, and management of the Real Property or any portion thereof, all buildings and other improvements or personal property now or hereafter placed, erected, or located on the Real Property, and any accounts and funds maintained under, pursuant to, or in connection with any such contracts and agreements;

(h) All present and future rights (but not the obligations) under or with respect to any declarations of restrictions governing or imposing rights or responsibilities on or with respect to any portion of the Real Property, as may hereafter be amended, modified, supplemented, or assigned, including all of Trustor's right, title, and interest thereunder;

(i) All adjacent streets (open or proposed), roads, sidewalks, alleys, public places, parking areas, and strips and gores of land now or hereafter appurtenant to or used or useful in connection with the Real Property or any portion thereof, or any buildings or other improvements now or hereafter erected, placed, or located on the Real Property or any portion thereof;

(j) To the extent permitted by the applicable agreements, all contracts (including, without limitation, service, supply, maintenance, management, consulting, and construction contracts), registrations, franchise agreements, permits, licenses (to the fullest extent assignable by Trustor), plans and specifications, options, deposits (including deposits with any public or private utility with respect to utility services furnished to the Real Property), refunds, credits, retentions, and other agreements, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of any business or activity conducted by Trustor from the Real Property, and all right, title, and interest of Trustor therein and thereunder, including, without limitation, the right, while an Event of Default remains uncured, to receive and collect any sums payable to Trustor thereunder;

(k) All rights Trustor may have, if any, to the use of any trade name or trademark by which the Real Property or any portion thereof, or any improvements or development thereon, are known;

(l) All rights under any policy or policies of insurance (including premium refunds and credits and insurance proceeds) insuring against damage or loss with respect to any portion of the Property, including all fire, casualty, business interruption, rent loss, and flood insurance, whether or not such insurance is required by this Deed of Trust or Beneficiary;

(m) All rights in and to any present and future deposit accounts (general time or demand, provisional or final) or investment or other accounts (including all accounts held jointly with someone else) maintained with Beneficiary, or with another institution into which proceeds of the loan secured hereby have been deposited;

(n) All goods, materials, supplies, machinery, furniture and furnishings, appliances, attachments, equipment, inventory, merchandise, general intangibles, accounts, chattel paper, instruments, promissory notes, drafts, investment property, commercial tort claims, letters of credit, letter-of-credit rights, supporting obligations, documents, and other personal property and assets of any type owned by Trustor and located on the Real Property (collectively, the "**Personal Property**"); and

(o) All (i) replacements and substitutions for, (ii) additions to, (iii) proceeds and products of (including all insurance proceeds and condemnation awards, or proceeds of any purchase in lieu thereof, that are or may become payable with respect to), and (iv) books, records and files relating to, all or any portion of the items described in the preceding subsections.

For the avoidance of doubt, no property of any tenant shall be included in the definition of "Property," "Improvements," or "Personal Property." The foregoing descriptions of items constituting the Property shall be construed as cumulative and not limiting, and the terms "include" and "including," when used in those descriptions, shall mean without limitation by reason of enumeration. Unless the context clearly indicates otherwise, the terms "equipment," "inventory," "accounts," "instruments," "promissory notes," "investment property," "commercial tort claims," "deposit accounts," "letter-of-credit rights," "supporting obligations," "chattel paper," "general intangibles," "proceeds" and "products" shall have the meanings provided for those terms in the Utah Uniform Commercial Code in effect on the date of this Deed of Trust. The Real Property and the Improvements located thereon are collectively called the "**Premises**." Capitalized terms used but not defined herein shall have the meanings set forth in the Loan Agreement.

## **2.2 Assignment of Rents and Leases.**

(a) Trustor represents and warrants to Beneficiary that, as of the time of recordation of this Deed of Trust, except for the Lease, no recorded or unrecorded lease or rental agreement exists that affects any portion of the Real Property.

(b) All of Trustor's right, title, and interest in and to existing and future rents, revenues, income, receipts, issues, and profits of the Premises and now or hereafter arising out of any Leases (as defined below) (collectively, "**Rents**") and the entire right, title, and interest of Trustor (including the right to exercise any landlord's liens and any and all other rights and remedies to which Trustor would be entitled under any Lease or by law) in and under all present and future rental agreements, leases, subleases, licenses, and all other agreements pursuant to

which Trustor or its predecessor in interest with respect to the Real Property grant to third parties any right to use and occupancy of all or any portion of the Premises (including rights in any security deposits and advance rentals held for the benefit of Trustor), together with any extensions, renewals, and modifications thereof (collectively, and including the Lease, the “**Leases**”), are hereby absolutely assigned and transferred to Beneficiary. It is the intention of Trustor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all Rents and to authorize and empower Beneficiary to collect and receive all Rents without the necessity of further action on the part of Trustor. During an Event of Default, Beneficiary is authorized to give notice of this assignment and Trustor agrees to execute, and to cause its property managers and affiliates to execute, any and all further instruments that Beneficiary may require to perfect this assignment. Any provision hereof notwithstanding, so long as no Event of Default exists, Trustor shall have a license to collect assigned Rents as the same shall become due. However, immediately upon the occurrence or existence of any Event of Default, all right of Trustor to collect or receive such Rents (including those past due and unpaid) shall terminate, whereupon Beneficiary shall be entitled to demand and receive the payment of such Rents (including those past due and unpaid), and to proceed against any lessee or tenant under any of the Leases (collectively, “**Tenants**”) (or its property) and/or any guarantors of the obligations of any such Tenant. In such event, Trustor directs and authorizes Tenants under any of the Leases and any guarantors of the obligations of any such Tenants to make to Beneficiary all payments required under the applicable Leases; Trustor hereby relieves any and all such Tenants from any liability to Trustor that Trustor might otherwise assert by reason of the Tenant’s making such payment to Beneficiary. All Rents collected by Beneficiary may be applied for the following purposes in any manner and order that Beneficiary deems advisable:

- (i) To the payment of all taxes and assessments levied against the Property if provision for paying those items has not otherwise been made;
- (ii) To the payment of any amounts due and owing to Beneficiary under the terms of the Obligation;
- (iii) To the payment of any obligations of Trustor under any Lease affecting the Premises or amounts secured by any other mortgage or deed of trust on the Real Property approved by Beneficiary; and
- (iv) Any remainder to Trustor or its designee or other assignee.

Receipt by Beneficiary of Rents shall not constitute a waiver of any other right that Beneficiary may have under this Deed of Trust or under Utah law, nor shall the receipt and application thereof cure any Event of Default or affect any foreclosure proceeding or any sale authorized by this Deed of Trust or Utah law, unless the Obligation has been fully satisfied.

(c) Except as expressly permitted by the Loan Agreement or this Deed of Trust, Trustor shall not, without Beneficiary’s prior written consent, which shall not be unreasonably withheld: (i) assign any of the Rents; (ii) collect any unreasonably large security deposits or any rent for more than one month in advance; (iii) change the general nature of the occupancy; (iv) enter into a Lease; (v) terminate or accept a surrender of any Lease except as permitted by the Lease; (vi) amend or modify any Lease to reduce (or effectively reduce by

means of rent concessions, rent-free occupancy periods, or the granting of tenant improvement allowances) the rent or term, or to grant any options or rights of first refusal to purchase the Real Property or any portion thereof; (vii) subordinate, or permit the subordination of, any Lease to the lien of a mortgage or deed of trust that is junior to this Deed of Trust; or (viii) take, fail to take, or suffer any action that would impair the security for the Obligation or Beneficiary's interest in the Property or the Rents. Any action taken in violation of the foregoing sentence shall be null and void. Trustor shall fully and timely perform all of the obligations of the landlord under all Leases of any portion of the Real Property and shall enforce, short of termination, the performance by all Tenants of all of their obligations under the Leases.

(d) Beneficiary shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Trustor under any Lease and Trustor hereby agrees to indemnify and hold Beneficiary harmless for, from, and against any and all such liability arising from any of the Leases or from the assignment contained in this Section (other than for loss caused by Beneficiary's gross negligence or willful misconduct). This Section shall not obligate Beneficiary to manage, care for or repair the Premises or make Beneficiary liable for any loss or damage to any Tenant, invitee, employee, licensee, or any other person resulting from the failure to properly manage, care for, or repair the Premises. Under no circumstance shall Beneficiary have any duty to produce Rents from the Premises. Regardless of whether Beneficiary, in person or by agent, takes actual possession of the Real Property, Beneficiary is not and shall not be deemed to be: (i) a "mortgagee in possession" for any purpose; (ii) responsible for performing any of the obligations of the lessor under any lease; (iii) responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Premises, or any negligence in the management, upkeep, repair, or control of the Premises; or (iv) liable in any manner for the Premises or the use, occupancy, enjoyment, or operation of all or any part of it.

(e) In the event that Beneficiary exercises its rights to possess and exclude Trustor from the Premises pursuant to Section 4.2, Beneficiary shall have full power and authority to employ such measures as it may deem necessary or advisable, in its sole discretion, to enforce the payment or security of the Rents, including actions for the recovery of rent, actions in forcible detainer and in distress for rent, and with full power: (i) to cancel or terminate any Lease for any reason that would entitle Trustor to cancel or terminate the same; (ii) subject to any applicable subordination, nondisturbance and attornment agreement or similar agreement executed by Beneficiary and the applicable Tenant ("**SNDA**"), to disaffirm any Lease that is subordinate to the lien of this Deed of Trust; (iii) to extend or modify any then existing Lease and to enter into new Leases, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date of issuance of a deed(s) to a purchaser(s) at a judicial or nonjudicial foreclosure sale, Trustor agreeing that any such Leases, and the options or other such provisions contained therein, shall be binding upon Trustor and all persons whose interests in the Premises are subject to the lien of this Deed of Trust and upon the purchaser(s) at any foreclosure sale, notwithstanding any redemption, discharge, or satisfaction of the Obligation or any judgment in foreclosure rendered thereon, or issuance of any certificate of sale or deed to any purchaser(s); (iv) to undertake and complete all repairs, decorating, renewals, replacements, alterations, additions, and improvements to the Premises as Beneficiary may deem necessary or advisable; (v) to insure the Premises and all risks incidental to Beneficiary's possession, operation, and management thereof; and (vi) to receive all of the Rents.

(f) Trustor, as landlord under any existing Leases affecting the Real Property, hereby declares, pursuant to the provisions of, and subject to any conditions or limitations contained in, any such existing Leases or any SNDA executed by Beneficiary and the applicable tenant with respect thereto, that all such existing Leases and any subleases thereunder, as may hereafter be amended or renewed, are and shall hereafter remain subject and subordinate to the lien and other provisions of this Deed of Trust, as may hereafter be amended.

### **2.3 Assignment of Property Contracts.**

(a) Assignment and Authorization to Exercise Rights. Trustor has entered, or may enter, into various contracts related to the development, construction, management, or occupancy of the Premises (the “**Property Contracts**”). As additional security for the payment and performance of the Obligation, to the extent permitted by the Property Contracts, Trustor hereby assigns, transfers, and conveys to Beneficiary, and grants to Beneficiary a security interest in, all of Trustor’s present and future right, title, and interest in and to or arising under the Property Contracts. Trustor hereby authorizes Beneficiary, upon the occurrence or existence of any Event of Default, or upon the occurrence of any default by Trustor under any one or more of the Property Contracts that remains uncured after the expiration of any grace period provided therein, and upon the election by Beneficiary to enforce Trustor’s rights under any one or more of the Property Contracts and to receive the performance of the relevant servicer thereunder. Trustor hereby authorizes such servicers to accept the foregoing assignment and authorizes and directs such servicers, during the existence of any Event of Default by Trustor and election by Beneficiary to do so under the Loan Agreement, to make and render all acts and performances required of the servicers under the terms of any one or more of the Property Contracts directly to or at the direction of Beneficiary. Trustor hereby relieves any such servicer from any liabilities to Trustor that Trustor might otherwise assert by reason of such servicer’s making or rendering performance under any one or more of the Property Contracts to or at the direction of Beneficiary. The Property Contracts shall not include the Lease or any management, supplier, and servicing contracts and agreements entered into by any Tenant for the operation of the Improvements.

(b) Power of Attorney. Subject to the terms of Section 5.16 below, Trustor hereby makes, constitutes, and appoints Beneficiary and Beneficiary’s successors and assigns, as Trustor’s true and lawful attorneys in fact, in Trustor’s name, place and stead, or otherwise, during the existence of any Event of Default:

(i) To take all actions and to execute, acknowledge, obtain, and deliver any and all writings or other items necessary or deemed advisable as a term, condition, or provision of the relevant Property Contracts or to exercise any of Trustor’s rights or to receive and enforce any performance by the servicer under the relevant Property Contracts.

(ii) To give any notices, instructions or other communications to such servicer or to any other person or entity in connection with the Property Contracts.

(iii) To demand and receive all performances, labor and materials due under or with respect to the Property Contracts and to take all lawful steps to enforce such

performances and to compromise and settle any claim or cause of action in Trustor arising from or related to the relevant Property Contracts.

(iv) To file any claim or proceeding, or to take any other action, in the name of Beneficiary, its successors and assigns, Trustor, or otherwise to enforce any performance due under or related to the relevant Property Contracts or protect and preserve the right, title, and interest of Beneficiary thereunder.

#### **2.4 Uniform Commercial Code Issues.**

(a) The filing of one or more financing statements in the records relating to personal property shall in no way derogate or impair Beneficiary's priority or rights on default to exercise either its rights and remedies as a Beneficiary of this Deed of Trust or as a secured party with respect to personal property under the Uniform Commercial Code of the State of Utah (the "UCC") in connection with the items of the Property covered by the UCC. This Deed of Trust is intended to and shall create a security interest in favor of Beneficiary in those items of the Property that are covered by the UCC, although such items are to be considered fixtures to the fullest extent permitted by law.

(b) This Deed of Trust constitutes a security agreement and a financing statement (fixture filing) and it is hereby recited (to the extent required by law because some portion of the Property may constitute fixtures) that this Deed of Trust is to be recorded in the office where a mortgage on the Real Property would be recorded, which is the office of the Recorder of Weber County, Utah.

(c) Trustor hereby certifies, with the understanding that Beneficiary will rely upon such certifications in making the loan secured hereby and determining the proper locations in which to make filings to perfect its security interest in the Property and conduct searches for the liens of potential competing creditors, and in including in Beneficiary's filings the identifying information required by law: (i) Trustor's exact legal name and mailing address are as set forth in the first Section of this Deed of Trust; (ii) Trustor is a limited liability company organized under the laws of Arizona; (iii) Trustor uses no other names (including trade names) other than its name set forth in the first Section of this Deed of Trust, and is not the successor by merger, consolidation, acquisition, change in form, nature, or jurisdiction of organization to any other entity; (iv) no effective financing statements are on file in the office of any secretary of state, county recorder, or other public office naming Trustor as debtor and describing any of the Property as collateral, except those to be released on the Closing Date; and (v) Trustor will not become involved in any merger, acquisition, dissolution, or other change in Trustor's business form or name.

(d) In the event Beneficiary proceeds under the UCC against any personal property encumbered by this Deed of Trust and reasonable notice is required pursuant to the UCC, then ten days' notice to Trustor or any other "debtor" described in the UCC shall constitute commercially reasonable notice. Beneficiary shall also be entitled to proceed as to both the Real Property and all personal or mixed Property and all fixtures in accordance with Beneficiary's rights and remedies with respect to the Real Property as provided applicable law.



**2.5 Further Assurances; After-Acquired Property.** At any time, and from time to time, upon written request by Beneficiary, Trustor will make, execute, and deliver, or cause to be made, executed, and delivered, to Beneficiary and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall reasonably be deemed desirable by Beneficiary, any and all such other and further mortgages, deeds to secure debt, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the reasonable opinion of Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Trustor under this Deed of Trust or any of the other Loan Documents and (b) the security interest created by this Deed of Trust upon and security title in and to all of the Property, whether now owned or hereafter acquired by Trustor. Upon any failure by Trustor so to do within 30 days following Beneficiary's request therefore, Beneficiary may make, execute, record, file, re-record, and/or refile any and all such mortgages, deeds to secure debt, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Trustor and Trustor hereby appoints Beneficiary the agent and attorney-in-fact of Trustor so to do, which appointment is coupled with an interest and shall be irrevocable so long as the Obligation remains unsatisfied. The security title of this Deed of Trust and the security interest created hereby will automatically attach, without further act, to all of Trustor's after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

### **III. PROTECTION OF PROPERTY AND BENEFICIARY'S INTEREST.**

**3.1 Warranty of Title.** Trustor represents and warrants that it is the sole owner of good and marketable fee simple title to the Real Property, and that it is, or will become, the owner of the other existing Property, and Trustor will forever defend the same against all claims and persons whomsoever, unto Beneficiary, its successors, and assigns, subject only to Permitted Encumbrances. All of Trustor's present and future right, title, and interest in the Property shall be subject to the lien and other terms and provisions of this Deed of Trust regardless of the time that any such right, title, and interest is created, obtained by, or conveyed, transferred or assigned to Trustor.

#### **3.2 Obligation to Maintain Premises; Repairs; Inspection by Beneficiary.**

(a) Trustor shall care for and keep and maintain the Premises, or cause the Premises to be cared for, kept, and maintained, in good order, condition, and repair (ordinary wear and tear excepted), and will at all times make or cause to be made such repairs, maintenance, renewals, and replacements as shall be necessary to maintain the Premises and abutting grounds, sidewalks, roads, parking, and landscape areas in good condition and repair, all to the same extent as a prudent owner would make. Trustor shall not substantially alter the Premises except for tenant improvements made pursuant to a Lease approved by Beneficiary (including the Lease) or as may be required by applicable laws, ordinances, orders, decrees, rules, regulations, or requirements of any governmental authority and any requirements, terms, or conditions contained in any restrictions, restrictive covenants, easements, licenses or leases, building codes, fire safety and air quality codes, flood protection laws and ordinances, laws or regulations concerning accessibility (including the Americans With Disabilities Act), zoning ordinances or stipulations, subdivision plats, master plans, development plans, or other

instruments or documents now or in the future affecting any portion of the Real Property or the Improvements (collectively, “**Legal Requirements**”). Trustor will, or will cause each Tenant to, regularly inspect and promptly repair and replace the Improvements when needed. All replacements of items of the Property will be of a value equal to or greater than the value of the item or items replaced. Trustor shall not commit, or permit to occur, any waste upon the Premises. Trustor shall, or shall cause each Tenant to, keep the Improvements and Personal Property free of termites, dry rot, fungus, and all harmful or destructive insects and shall keep the landscaping of the Premises in good condition, watered and free from weeds, and all plants, trees, and shrubs pruned and in good condition. Trustor shall, or shall cause each Tenant to, keep the Premises free of rubbish and unsightly, unsafe, and unhealthful conditions.

(b) Trustor shall, or shall cause each Tenant to, comply with all Legal Requirements now or in the future affecting the Premises or requiring any alteration or improvements to be made thereof, but shall not otherwise construct or make structural alterations to any Improvements on the Real Property (except for tenant improvements and alterations made pursuant to a Lease approved by Beneficiary (including the Lease)). To Trustor’s knowledge, the building plans and specifications for the Improvements on the Real Property comply with all applicable zoning, building, fire safety, and accessibility laws, ordinances, codes, rules and regulations, and other laws and regulations applicable thereto, and such plans and specifications and improvements have been, or will be, approved by all appropriate authorities. To the best of Trustor’s knowledge, no notice of any violations of ordinances, codes, rules, regulations, orders, restrictive covenants, or statutes applicable to the Premises has been received. To Trustor’s knowledge, the Real Property, the Improvements, and their use fully comply and shall continue to comply with environmental, air quality, zoning, planning, building, and other governmental laws, ordinances, rules, regulations, and requirements and Trustor has received no notice to the contrary. Without Beneficiary’s prior written consent (unless consent of Trustor is not required under the Lease), Trustor will not (i) initiate any zoning reclassification of the Premises, (ii) seek any variance under existing zoning ordinances applicable to the Premises, (iii) use or permit the use of the Premises in a manner that would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws, rules, or regulations, or (iv) impose, release, or modify any restrictive covenants upon the Premises. To the best of Trustor’s knowledge, as of the date hereof, no action or proceeding is pending before any court, quasi-judicial body, or administrative agency relating thereto except as disclosed prior to the date hereof to Beneficiary.

(c) If the Property, or any portion thereof, shall be damaged or destroyed by a Casualty or become subject to any Condemnation, the provisions of Section 6.4 of the Loan Agreement shall apply with respect thereto.

(d) Subject to the rights of each Tenant, Beneficiary shall have the right to enter upon the Property in accordance with Section 6.5 of the Loan Agreement.

**3.3 Insurance.** Trustor shall obtain and maintain, or cause to be obtained and maintained, in full force and effect at all times with respect to the Property, insurance policies as required pursuant to Section 6.3 of the Loan Agreement, the provisions of which are incorporated by reference as if fully set forth herein.

**3.4 Payment of Taxes, Assessments and Other Liens or Charges.** Trustor shall pay or cause to be paid to the proper officials or persons all Taxes and Other Charges, and Trustor shall cause to be paid and discharged any Lien against the Property (other than Permitted Encumbrances), in each case in accordance with Section 6.2 of the Loan Agreement. Trustor may contest in good faith the validity or amount of any tax, assessment, Lien, or governmental charge by appropriate proceedings provided by law, including payment of the tax, assessment, Lien or charge under protest, if required, provided that: Trustor conducts such contest in accordance with Section 6.2 of the Loan Agreement. Trustor shall not consent to, or vote in favor of, the inclusion of any portion of the Real Property in a special improvement, assessment, community facilities, or similar district without Beneficiary's prior written consent, such consent not to be unreasonably withheld. Trustor shall provide Beneficiary with prompt notice of any notification that Trustor may receive from any governmental authority or other person of any intent or proposal to form such a district that may include any portion of the Real Property, and Beneficiary shall have the right to object to the same and to otherwise appear and participate in hearings and other proceedings. Trustor shall pay or cause to be paid when due all charges for water, water delivery, gas, electric power and light, telephone, sewer, waste removal, bills for repairs, and all other claims, encumbrances and expenses incident to the ownership and occupancy of the Real Property.

**3.5 Replacement or Addition of Tangible Personal Property or Improvements Subject to Encumbrance.** All tangible Personal Property shall be kept on the Real Property and shall not be removed therefrom without the prior written consent of Beneficiary, except for items (i) sold in the ordinary course of business, or (ii) consumed or worn out in ordinary usage and replaced as described in Section 3.2. Trustor shall provide written notice to, and obtain the consent of, Beneficiary prior to replacing, adding or, installing any tangible Personal Property (i) that is or will be subject to a security interest (other than Permitted Encumbrances) held by a seller or any other person under the UCC, or (ii) with a value greater than \$100,000. For the avoidance of doubt, the foregoing shall not apply to Improvements that are permitted to be replaced, added, or installed by the terms of the Lease. In the event any such Personal Property or Improvements are subject to a security interest (other than Permitted Encumbrances) held by a seller or other party, whether or not Trustor shall have given to Beneficiary the notice described above, Beneficiary may, at its option, at any time, pay the balance due to satisfy such security interest, and the amount so paid, together with any hazard insurance premiums paid by Beneficiary with respect to that property, shall be a lien on the Property, shall be added to the Obligation, and shall be payable on demand, together with interest, from the date of advance until paid at the Default Interest Rate.

**3.6 Actions or Proceedings Affecting Property; Duty to Appear.** Trustor agrees to appear in and prosecute or defend any action or proceeding that may affect the priority of this Deed of Trust or the security, rights, or powers of Beneficiary hereunder or that seeks to impose liability on Trustee or Beneficiary because of any act or omission of Trustor, and Trustor shall pay all costs and expenses (including the cost of searching title) and attorneys' fees incurred in such action or proceeding. Beneficiary may appear in and defend any action or proceeding purporting to affect the security or priority hereof or the rights or powers of Beneficiary. Beneficiary may, if Beneficiary reasonably determines that Trustor is failing or will fail to do so, pay, purchase, contest or compromise any adverse claim, encumbrance, charge, or lien (other than Permitted Encumbrances) that Beneficiary reasonably determines to be prior or superior to

the lien of this Deed of Trust. All amounts paid, suffered, or incurred by Beneficiary in exercising the authority granted in this Section 3.6, including reasonable attorneys' fees, shall be added to the Obligation, shall be a lien on the Property, and shall be due and payable by Trustor to Beneficiary on demand, together with interest from the date of advance until paid at the Default Interest Rate. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

**3.7 Sale, Lease, or Conveyance by Trustor.**

(a) Except as permitted by the Loan Agreement, Trustor shall not Transfer all or any portion of the Property, voluntarily, involuntarily, or by operation of law, without the prior written consent of Beneficiary, which Beneficiary may withhold in its sole, absolute, and exclusive discretion.

(b) If the ownership of the Property or any portion thereof becomes vested in any person other than Trustor, Beneficiary may deal with such successor(s) in interest with reference to the Obligation and this Deed of Trust in the same manner as with Trustor, without in any way vitiating or discharging Trustor's liability hereunder or for payment of the Obligation. However, the foregoing sentence shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof and Trustor's violation of the provisions of this Section 3.7 shall entitle Beneficiary to accelerate the Obligation (and to collect any applicable prepayment premium due upon acceleration under the Note).

**3.8 Due on Encumbrance – Consent by Beneficiary.** Subject to Trustor's right to contest as provided herein and in the Loan Agreement, if applicable, Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust in the event that the Real Property is subjected to a lien or interest (other than Permitted Encumbrances) in favor of a related or a third party person or entity that is not bonded over or discharged within 30 days, including, without limitation, a property or homeowner's association, taxing authority, governmental or quasi-governmental agency, or vendor of perishable or agricultural goods without Beneficiary's prior written consent (which Beneficiary may withhold in its sole discretion). This shall include a lien or interest created consensually or by operation of law, or arising from a default under any applicable declarations or covenants affecting the Real Property.

**3.9 Changes or Modification of Applicable Tax Laws.** In the event of the imposition after the date of this Deed of Trust of any law of the United States of America, any state, or any other domestic or foreign governmental authority claiming to have jurisdiction, deducting from the value of real property for the purposes of taxation or assessment any lien thereon or changing in any way the taxation of mortgages, deeds of trust, or of debts secured by mortgages or deeds of trust or the manner of the collection of any such taxes, and imposing a tax or assessment, either directly or indirectly, on this Deed of Trust or the Note, the sums evidenced or secured thereby or the interest payable thereon, Trustor shall pay the entire tax or assessment in addition to all other payments required hereunder and shall pay any such tax or assessment thereafter levied or assessed against the Premises. The provisions of this Section shall not apply to changes in federal and state income tax laws.

**3.10 Substitute Performance.** Should Trustor fail to pay or perform any portion of the Obligation and such failure is or becomes an Event of Default (subject to any notice and cure period), then Beneficiary, during the continuation of such Event of Default, without obligation to do so and without releasing Trustor from any portion of the Obligation, may pay or perform the same in such manner and to such extent as Beneficiary, in its sole good faith discretion, may deem necessary on a conservative basis to protect the security hereof. Beneficiary is hereby authorized to enter upon the Premises for such purposes. All expenses or charges that Beneficiary may incur in accordance with the foregoing in connection with the care or preservation of the Premises or any part thereof at any time, or the payment of any taxes, assessments, insurance premiums (including after written notice to Trustor premiums for so-called "forced placed" insurance coverage protecting only the interest of Beneficiary in the Property), or encumbrances levied upon or attaching to the Premises or any portion thereof or interest therein, or any cost of redemption thereon, or any sums of money, charges, expenses, or fees that Beneficiary may pay pursuant to any provision hereof or of the Loan Agreement, shall be added to the Obligation, shall be payable by Trustor on demand, and shall bear interest at the Default Interest Rate from the date of advance until paid. The foregoing amounts shall also be guaranteed by any guarantie(s) now or hereafter relating to the Obligation.

**3.11 Environmental Inspection Easement; Hazardous Substances; Indemnity.**

(a) Following an Event of Default, and so long as such Event of Default is continuing, subject to the rights of Tenants under the Leases, Trustor hereby grants and conveys to Beneficiary and Beneficiary's agents an easement to enter upon the Premises (including all buildings or facilities located thereon) at any reasonable time following reasonable notice (except in the case of an emergency or during an Event of Default), and from time to time, for the purpose of making such audits, tests, inspections, and examinations, including subsurface exploration and testing, and inspecting and copying Trustor's records relating to environmental matters, as Beneficiary in its reasonable discretion considers to be necessary, convenient, or proper to determine whether the ownership, use, and operation of the Premises and the conduct of the activities engaged in thereon are in compliance with federal, state, and local environmental laws, rules, and regulations. This easement shall exist and continue until the entire Obligation has been repaid in full and this Deed of Trust has been released of record, and a release of this Deed of Trust shall terminate the easement granted herein.

(b) Trustor represents, warrants, and agrees that, except as disclosed in the Phase I Environmental Site Assessment prepared by BBG Assessment on July 16, 2018 (the "**Environmental Report**"), obtained by Trustor with respect to the Real Property prior to the inception of the loan secured hereby: (i) there has been no disposal, discharge, deposit, injection, dumping, leaking, spilling, placing, or escape of any toxic or hazardous substance, waste, pollutant, or contaminant (as those items are defined or described under federal, state, or local laws, regulations, or requirements) in other than *de minimis* amounts on, in, under, or from any of the Premises in violation of applicable laws and there is and will be no facility in or on any of the Premises that is used for the treatment, storage or disposal of any toxic or hazardous material, substance, waste, pollutant, or contaminant (as those terms are defined or described in federal, state, or local laws, regulations, or requirements), and (ii) no underground storage tanks exist on or under the Real Property and Trustor agrees that no additional underground storage tanks shall be installed on or under the Real Property without Beneficiary's prior written consent. Trustor

further represents, warrants, and agrees: (A) all Improvements are and will continue to be free of asbestos, PCBs, lead based paint, and other sources of contamination; (B) all storage tanks, pipes, and equipment, if any, are fit and sound, and there are not now, nor ever have been, any fluid leaks or breaches of underground tanks; (C) the Premises is free of soil or groundwater contamination in violation of applicable laws; (D) the Premises and the business conducted thereon are and shall continue to be in full compliance with, and do not require remediation, corrective action or other clean-up under, applicable environmental laws and regulations, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, and their state analogs; and (E) Trustor has received no notice regarding, and has no reason to know of any facts inconsistent with the statements and representations in this Section.

(c) Trustor shall indemnify and save and hold harmless Beneficiary and its successors and assigns for, from, and against all claims, liabilities, proceedings, suits, losses, damages (including punitive damages), judgments, and environmental response and clean up costs, fines, penalties, and expenses (including reasonable counsel fees, costs, and expenses incurred in investigating and defending against the assertion of any such liabilities, regardless of their merit), which may be asserted against, sustained, suffered, or incurred by Beneficiary or its successors and assigns because of the existence of any such toxic or hazardous material (including, without limitation, gasoline, kerosene, other flammable or toxic petroleum substances, toxic pesticides and herbicides, volatile solvents, asbestos or formaldehyde-containing materials, and radioactive materials), substance, waste, pollutant, or contaminant or arising from any other violation of any governmental law, regulation, or requirement now or hereafter in effect relating to human health or the safety or protection of the environment. This indemnity shall include claims asserted by any federal, state, or local governmental agency or any private party and shall continue in effect following any release and reconveyance of this Deed of Trust or foreclosure or other realization upon the security by Beneficiary or its successors and assigns, or any conveyance in lieu of such foreclosure or other realization.

#### **IV. DEFAULT AND REMEDIES.**

**4.1 Acceleration and Exercise of Remedies.** At any time while an Event of Default exists, Beneficiary may declare the Obligation to be immediately due and payable and may exercise any one or more of the rights and remedies described herein and in the other Loan Documents.

**4.2 Beneficiary's Right to Possession.** Subject to the rights of each Tenant pursuant to the Leases, during the existence of any Event of Default, Beneficiary shall, at its option, be entitled to the immediate possession of the Property with the right to manage the same as a mortgagee in possession and to collect and apply all revenues, income, receipts, issues, and profits of Trustor derived from the Premises (collectively, the "**Profits**") and any Rents to the payment of the Obligation. Trustor and all persons claiming under Trustor shall, upon demand, immediately deliver possession of the Property to Beneficiary or its assigns. Beneficiary shall not be liable to Trustor for any obligation or charge in dealing with the Property as a mortgagee in possession (other than for loss caused by Beneficiary's gross negligence or willful misconduct). Nothing in this Section shall impose upon Beneficiary: (a) any duty, obligation, or responsibility for the control, care, management, or repair of the Property, or for complying with

or enforcing any of the terms and conditions of any Lease, Property Contract, or other agreement with respect to the Property; or (b) any responsibility or liability for any waste committed on the Property by Tenants or by any other persons, for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair, or control of the Property resulting in loss, injury, or death to any Tenant, licensee, employee, or other person.

**4.3 Appointment of Receiver.** During the existence of any Event of Default, a receiver may be appointed, with or without notice, whereupon the receiver shall immediately be entitled to possession of all of the Property (subject to the rights of Tenants under the Leases). Beneficiary's right to a receiver shall be absolute and unconditional and a receiver may be obtained in an independent action, regardless of whether Beneficiary seeks any relief other than the appointment of a receiver; Trustor expressly waives any express or implied legal requirement that might otherwise require the initiation or pendency of an action or proceeding seeking other relief as a condition to the appointment of a receiver. The receiver may be appointed without regard to the adequacy of any security for the Obligation and Trustor shall immediately surrender possession of the Property to the receiver upon his appointment. Subject to the rights of Tenants under the Leases, the receiver shall have the right to take possession of the Property, to collect any Rents and Profits therefrom, to complete the construction or reconstruction of any structures or improvements in progress thereon, to rent or sell the Premises or portions thereof, to operate any business of Trustor thereon, and to exercise such other rights as may be granted by the court pending such proceedings, and up to the time of redemption or issuance of a trustee's or sheriff's deed. Rents and Profits shall be applied to the costs and expenses of the receiver and the receivership, including costs of construction or reconstruction, and the balance shall be applied in the manner described in the Loan Documents.

**4.4 Sale by Trustee Pursuant to Power of Sale; Judicial Foreclosure.** During the existence of any Event of Default, upon the giving of notice of the time and place of sale in the manner provided by law, the Property may be sold by Trustee in the manner provided by law under the power of sale conferred hereby. The mailing address of Trustor for the purpose of mailing a copy of the notice of sale shall be the address specified above with Trustor's name, unless a subsequent request for notice of sale specifying a different address is recorded in the manner provided by law. In lieu of sale pursuant to the power of sale conferred hereby, this Deed of Trust may, at Beneficiary's election, be judicially foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Any cure periods provided in this Deed of Trust or the other Loan Documents may, at Beneficiary's sole option, run concurrently with any statutory cure periods.

**4.5 Sale of Property in Whole or in Separate Lots, Parts, or Parcels; Right of Beneficiary to Buy.** In the event of a trustee's sale or foreclosure sale, the Property may be sold, at the option of Beneficiary or Trustee, in whole or in separate lots, parts, or parcels and Beneficiary or Trustee may bid (whether by credit bid or otherwise) and become the purchaser at any such sale. Trustee shall deliver to any such purchaser its deed (or bill of sale, as applicable) conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in any such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The proceeds of the sale shall be applied as provided by law. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Property (subject to the rights of Tenant under the Leases). The power of sale under this Deed of Trust shall not be exhausted by

any one or more sales or attempted sales as to all or any portion of the Property remaining unsold, but shall continue in full force and effect until all of the Property shall have been sold by exercise of the power of sale in this Deed of Trust and the Obligation has been fully paid and performed.

**4.6 Effect of Foreclosure on Existing Leases.** Upon any sale of the Real Property under this Deed of Trust, any Lease that is subordinate to the lien of this Deed of Trust shall remain in effect, the purchaser thereby being subrogated to Trustor's interest therein, unless the purchaser elects to treat any such Lease as terminated by virtue of the sale under the prior lien and charge of this Deed of Trust, unless a separate non-disturbance agreement executed by Beneficiary precludes such termination.

**4.7 Attorneys' Fees and Expenses; Failure of Trustor to Vacate.** During the existence of an Event of Default, if any sale proceeding, lawsuit or arbitration is commenced, or any attorney is retained to collect any amounts secured hereby or to enforce any rights granted Beneficiary hereunder (regardless of whether an action is actually commenced), Trustor shall pay Beneficiary's reasonable attorneys' fees and costs (to be determined by the court or arbitrator and not by jury, in the case of litigation or arbitration) incurred in enforcing its rights under the Loan Documents, any guaranty now or hereafter relating to the Obligation and any other agreements which evidence, secure or guarantee all or any portion of the Obligation, and Trustee's reasonable attorneys' fees, Trustee's fees and its costs and expenses in connection with any sale proceedings or lawsuit. In addition, Trustor shall pay a reasonable fee for title searches, foreclosure reports, trustee's sale guaranties, litigation guaranties, publication costs, environmental assessments, or appraisal reports made or obtained either (a) in preparation for and in the conduct of any such proceedings or suit, or (b) to evidence to potential bidders at any judicial or nonjudicial sale pursuant to this Deed of Trust the true condition of title to or the value of the Property or any portion thereof. All of the foregoing fees and expenses shall be payable on demand, added to the Obligation and secured by this Deed of Trust, shall be included in any judgment or arbitration award obtained by Beneficiary and shall be paid to Beneficiary as part of any reinstatement tendered hereunder. If Trustor fails to vacate the Real Property following foreclosure or sale, Trustor shall be a tenant at sufferance and subject to an action for forcible entry and detainer, wherein Beneficiary shall be entitled to collect from Trustor, in addition to all other amounts due hereunder, a reasonable rental for the Real Property during the period of such holding over at sufferance. The foregoing amounts shall also be guaranteed by any guarantee(s) now or hereafter relating to the Obligation.

**4.8 Additional Remedies of Beneficiary; No Waiver.**

(a) In addition to any remedies provided herein for breach or default hereof, Beneficiary shall have all other remedies allowed or provided for under or described in the other Loan Documents and all other writings executed or delivered by any Trustor Party in connection with the Obligation, or available under applicable law. Any one or more rights and remedies available to Beneficiary may, at its option, be sought and exercised concurrently or consecutively, and in inconsistent proceedings, whether legal or equitable. Beneficiary's failure to exercise any of its rights upon any default or breach shall not prejudice its rights in the event of any other or subsequent default or breach. Beneficiary's delay in exercising any rights shall not preclude it from exercising the same at any time during the continuance of such default or



breach. By accepting any performance or payment of any portion of the Obligation after its due date, Beneficiary shall not waive the agreement contained herein that time is of the essence hereof, nor shall Beneficiary waive its rights to require prompt performance or payment when due of the remainder of the Obligation or to consider failure to so perform or pay a default hereunder.

(b) Without limitation of Beneficiary's rights of enforcement with respect to the Property in accordance with the procedures for foreclosure of real estate, Beneficiary may exercise its rights under the UCC and, in conjunction therewith:

(i) Subject to the rights of Tenants under the Leases, Beneficiary may enter upon the Real Property to take possession of, assemble, and collect any or all Personal Property collateral or to render it unusable in accordance with applicable law;

(ii) Beneficiary may require Trustor to assemble any or all Personal Property collateral and make it available at a place designated by Beneficiary that is mutually convenient to allow Beneficiary to take possession or dispose of such collateral;

(iii) written notice shall be mailed to Trustor as provided herein at least 30 days prior to the date of public sale of the Property or prior to the date on which private sale of the Property will be made, and any such notice shall constitute reasonable notice;

(iv) any sale made under the provisions of this subsection (b) shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided herein;

(v) in the event of a foreclosure sale, whether made by Trustee at a trustee's sale or under judgment of a court, the Property and the other collateral may, at Beneficiary's option, be sold as a whole;

(vi) Beneficiary need not take possession of the Property or any part thereof prior to the time the sale is conducted, nor shall it be necessary for the Property or any part thereof to be present at the location of the sale;

(vii) with respect to application of proceeds from disposition of the Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like and reasonable attorneys' fees and legal expenses incurred by Beneficiary;

(viii) any and all statements of fact or other recitals made in any trustee's deed, bill of sale or assignment, or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Obligation or as to the occurrence of any Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place, and terms of sale and of the property to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be *prima facie* evidence of the truth of the facts so stated and recited;

(ix) Beneficiary may appoint or delegate any one or more persons as its agent to perform any acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale;

(x) Beneficiary may comply with any applicable state or federal Legal Requirements in connection with the disposition of the Property and such compliance will not be considered to adversely affect the commercial reasonableness of any disposition of the Property;

(xi) Beneficiary may dispose of the Property without giving any warranties and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose, or the like, but any such disclaimer will not be considered to adversely affect the commercial reasonableness of any disposition of the Property;

(xii) Trustor acknowledges that a private sale of the portion of the Property constituting personal property may result in less proceeds than a public sale; and

(xiii) Trustor acknowledges that the Property may be sold at a loss to Trustor and that in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss.

(c) If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of Real Property, in any manner permitted by Article 9 of the UCC, including any public or private sale, or in any other manner permitted by any other applicable law.

(d) Beneficiary may choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to Real Property and Trustor agrees that such a sale of personal property together with Real Property constitutes a commercially reasonable disposition of the personal property.

**4.9 Loan Charges.** If any applicable law limiting the amount of interest or other charges permitted to be collected from Trustor is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Trustor is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Beneficiary in excess of the permitted amounts shall be applied by Beneficiary to reduce the principal of the Loan. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Trustor has been violated, all indebtedness which constitutes interest, as well as all other charges levied in connection with the indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

**4.10 Waiver of Statute of Limitations.** Trustor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce any Loan Document.

**4.11 Waiver of Marshalling.** Notwithstanding the existence of any other security interests in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided in this Deed of Trust, the Note, any other Loan Document or applicable law. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Trustor and any party who now or in the future acquires a security interest in the Property and who has actual or constructive notice of this Deed of Trust waives any and all right to require the marshalling of assets or to require that any of the Property be sold in the inverse order of alienation or that any of the Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Deed of Trust.

**V. GENERAL PROVISIONS.**

**5.1 Additional Documents.** Trustor agrees to execute and deliver to Beneficiary, upon demand, any additional agreements, instruments, or documents that Beneficiary deems reasonably necessary on a conservative basis to secure to Beneficiary any right or interest granted or intended to be granted to Beneficiary under this Deed of Trust. In the event any rights, easements, or other hereditaments shall hereafter become appurtenant to any part of the Property, they shall become subject to the lien of this Deed of Trust.

**5.2 Estoppel Certificate/Record Inspection.** Trustor, within 30 days after written request by Beneficiary, will furnish to Beneficiary a written statement, duly acknowledged, of the amount of the Obligation and whether any offsets or defenses exist against the Obligation and such other matters as Beneficiary may reasonably request. Trustor will permit Beneficiary or its representatives from time to time to examine at Trustor's principal place of business in Arizona all books and records and agreements of Trustor pertaining to any portion of the Premises.

**5.3 No Offset.** Except as otherwise provided herein or in the other Loan Documents, all sums comprising the Obligation shall be paid without notice, demand, offset, deduction, counterclaim, defense, abatement, suspension, diminution, or reduction. Trustor's obligation to do so shall not be released, discharged, or otherwise diminished by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of, the Premises or any portion thereof; (b) any restriction or prevention of, or interference with, the use of the Premises or any portion thereof; (c) any title defect or encumbrance, any eviction from the Premises, or any portion thereof by the holder of superior title or otherwise; (d) except by operation of law or pursuant to a final unappealable order by a court of proper jurisdiction, any bankruptcy, insolvency, reorganization, composition, dissolution, liquidation, or similar proceeding relating to Trustor or Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Trustor or Beneficiary; (e) any claim that Trustor may now or in the future have against Beneficiary; (f) any default or failure on the part of Beneficiary to perform or comply with any of the terms of this Deed of Trust or any other Loan Document; or (g) any other similar occurrence. Beneficiary's acceptance of any payment in an amount less than the amount then due and owing under the Loan Documents shall be deemed an acceptance on account only and shall not in any way constitute an accord and satisfaction or a waiver, or impair Beneficiary's ability to treat an Event of Default as continuing to exist.

**5.4 Reconveyance of Property.** Upon written request of Beneficiary stating that the entire Obligation has been paid and performed, and upon payment of Trustee's fees, Trustee shall reconvey the Property without warranty. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." In lieu of execution of a reconveyance by Trustee, Beneficiary may execute a release and reconveyance on behalf of Trustee, whereupon title shall be vested in Trustor or other persons legally entitled thereto and this Deed of Trust shall thereafter be of no further force or effect. Beneficiary (or Trustee, if Beneficiary elects not to charge a fee) may charge a reasonable release fee upon the discharge of the Obligation and release of this Deed of Trust.

**5.5 Partial Reconveyance by Trustee; Dedications and Easements.**

(a) At any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note, without affecting the personal liability of any person for payment or performance of any portion of the Obligation or the lien or priority of this Deed of Trust, Trustee may reconvey any part of the Property, consent to any rezoning or the making of any map or plat thereof, join in granting any easement or dedication thereon, or in creating any covenants, conditions or restrictions affecting the use or occupancy of the Premises, or join in any extension agreement or agreement subordinating the lien or charge hereof.

(b) So long as no Event of Default then exists, and Trustor obtains any required written joinders or consents from any other parties who have interests in any relevant portions of the Real Property, Beneficiary shall not unreasonably withhold its consent to, approval of or joinder (on a quitclaim basis only, without creating potential liability for Beneficiary) in any customary and standard roadway or utility easements or similar dedications that are reasonably necessary to complete the improvements, to otherwise properly develop the Real Property, or to satisfy any customary and standard Legal Requirements. To the extent any such easements or dedications are granted or made without receipt by Trustor of consideration therefor, Beneficiary shall provide appropriate partial releases from the lien of this Deed of Trust without charge to Trustor except for the reimbursement of any Beneficiary costs and expenses in connection therewith.

**5.6 Acceptance of Trust; Trustee Resignation; Notification of Sale.** Trustee accepts the trust created hereby, which shall be irrevocable by Trustor, when this Deed of Trust, executed and acknowledged, is recorded as provided by law. Trustee may resign at any time by giving notice thereof to Beneficiary as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

**5.7 Successor Trustee.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, in the manner provided by law. Such writing, upon recordation, shall be conclusive proof of proper substitution of such successor Trustee or Trustees who shall, without conveyance from the predecessor Trustee, succeed to all its title.

**5.8 Additional Security.** The taking or acceptance of this Deed of Trust by Beneficiary shall in no event be considered to constitute a waiver of, or in any way affect or impair, any other security that Beneficiary may have, acquire simultaneously herewith, or hereafter acquire for the Obligation, nor shall the taking at any time by Beneficiary of any such additional security be construed to constitute a waiver of, or in any way affect or impair, the security of this Deed of Trust. Beneficiary may resort to its several securities for the payment of the Obligation in such order and manner as it may deem appropriate. Trustor, and any party hereafter claiming an interest in any portion of the Property by or through Trustor (other than Beneficiary), hereby waives any benefits under the doctrine of marshaling in the event of judicial or nonjudicial foreclosure under this Deed of Trust.

**5.9 Construction of Agreement; Definitions.** This Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of the Sections in this Deed of Trust are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Deed of Trust or the provisions of such Sections. This Deed of Trust shall be construed as a whole in accordance with the fair meaning of its language and, as each party has been represented by legal counsel of its choice or deliberately chosen not to be so represented, in the negotiation of this Deed of Trust, neither this Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Deed of Trust as a whole rather than to any particular Section; (c) "person" includes a corporation, trust, partnership, limited liability company, unincorporated association, governmental authority, or other entity, as well as a natural person; (d) "**Beneficiary**" shall mean the holder at any time, including pledgees, of the Note or other writings secured hereby, whether or not named as Beneficiary herein; and (e) "**Trustor**" shall include all persons or entities named in this Deed of Trust as Trustors, severally and collectively, and any subsequent owner of all or any portion of the Property, and their liability under this Deed of Trust shall be joint and several; *provided, however*, that the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof). Unless the context of this Deed of Trust otherwise clearly requires, references to the plural include the singular, to the singular include the plural, and to the part include the whole. Any exhibit, schedule, and addendum attached hereto is hereby incorporated herein and made a part hereof for all purposes and references in this Deed of Trust to such exhibits, schedules, and addenda shall be deemed to include this reference and incorporation.

**5.10 Recording; Time of the Essence; Binding Effect.** Trustor expressly authorizes the recording of this Deed of Trust and any UCC-1 financing statement naming Trustor as debtor and Beneficiary as secured party upon the delivery of the same to the Weber County, Utah recorder or other applicable filing office authorized to file or record the same under applicable law. Time is of the essence hereof. Without limitation of the restrictions on transfer described in Section 3.7, this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, personal representatives, legatees, devisees, successors, and assigns.

**5.11 Governing Law; Waiver of Right to Jury Trial.**

(a) this Deed of Trust shall be governed by and construed according to the substantive laws and judicial decisions of, the State of Utah and applicable federal laws, rules, and regulations.

(b) The waiver of the right to a jury trial set forth in Section 3.05 of the Note and in Section 12.12 of the Loan Agreement shall also apply to claims, disputes, demands, actions, and causes of action arising under this Deed of Trust.

**5.12 Notices.** All notices required or permitted to be given hereunder shall be given as provided in the Loan Agreement unless otherwise provided by applicable law.

**5.13 Amendment.** This Deed of Trust cannot be amended or changed except by a written agreement signed by Trustor and Beneficiary.

**5.14 Severability; Enforceability.**

(a) Each covenant, provision, and condition of this Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision, or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision, or condition had not been contained herein.

(b) Should this instrument be or ever become ineffective as a deed of trust, then it shall be construed and enforceable as a realty mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

(c) If the lien of this instrument is invalid or unenforceable (either as a deed of trust or as a realty mortgage) as to any part of the Obligation, or if the lien is invalid or unenforceable as to any portion of the Property, the unsecured or partially secured portion of the Obligation shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligation. All payments made on the Obligation, whether voluntary or pursuant to foreclosure or some other enforcement action or procedure taken hereunder, shall be considered to have been first applied to the full payment of that portion of the Obligation that is not secured or fully secured by the lien of this instrument.

**5.15 No Merger.** If the interests of Beneficiary and Trustor under this Deed of Trust shall at any time become vested in Beneficiary, by reason of foreclosure or otherwise, the lien of this Deed of Trust shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates unless otherwise consented to in writing by Beneficiary.

**5.16 Power of Attorney.** The powers of attorney granted by Trustor to Beneficiary in Section 2.3(b) above are powers coupled with an interest and shall be irrevocable and unaffected by the disability of the principal so long as any portion of the Obligation remains unpaid or unperformed. Beneficiary shall have no obligation to exercise any of the rights and powers described therein in any event.

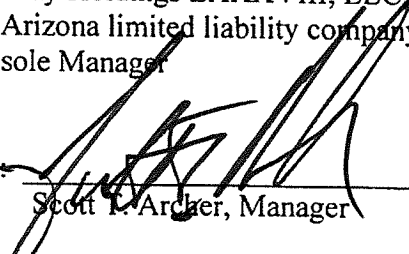
**5.17 Counterparts.** This Deed of Trust may be executed and/or acknowledged in one or more counterparts, each of which may be executed and/or acknowledged by one or more of the signatory parties hereto. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Deed of Trust to form one legally effective document.

[Signature page follows.]

**TRUSTOR:**

BG ROY FITNESS, LLC, an Arizona limited liability company

By: Barclay Holdings LXXXVIII, LLC  
an Arizona limited liability company,  
its sole Manager

By:   
\_\_\_\_\_  
Scott T. Archer, Manager

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 2020, by Scott T. Archer, the Manager of Barclay Holdings LXXXVIII, LLC, an Arizona limited liability company, sole manager of BG Roy Fitness, LLC, an Arizona limited liability company, on behalf of the companies.

  
\_\_\_\_\_  
Notary Public

My commission expires: 3-1-2023





**EXHIBIT A**

**LEGAL DESCRIPTION**

PART OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT A POINT 783.3 FEET SOUTH AND 175 FEET NORTH 89°58' WEST OF THE NORTHEAST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 343.65 FEET; THENCE EAST 125 FEET TO THE WEST LINE OF HIGHWAY; THENCE SOUTH 52.35 FEET; THENCE WEST 463 FEET; THENCE NORTH 66 FEET; THENCE WEST 122 FEET TO THE WEST LINE OF 2000 WEST STREET; THENCE NORTH 198 FEET ALONG STREET; THENCE EAST 5 FEET; THENCE NORTH 0°10' EAST 112.10 FEET; THENCE AROUND THE ARC OF A 20 FOOT RADIUS CURVE TO RIGHT 31.37 FEET; THENCE SOUTH 89°58' EAST 181 FEET; THENCE SOUTH 0°10' WEST 132 FEET; THENCE SOUTH 89°58' EAST 138 FEET; THENCE NORTH 0°10' EAST 132 FEET; THENCE SOUTH 89°58' EAST 116 FEET TO BEGINNING.