

Trust Deed Page 1 of 25

Gary Christensen Washington County Recorder
 07/27/2021 04:14:15 PM Fee \$40.00 By FIRST
 AMERICAN - ST. GEORGE MAIN

363-6146203

After recording, return to:

ALTABANK
 2176 N. Main Street
 North Logan, Utah 84341
 Attention: Dustin Ward

A.P.N.: SG-DCR-1A-C1; SG-DCR-1A-C3; and PART SG-5-31-433-SLL

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

(Leasehold Trust Deed with respect to SITLA Leaseholds)

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Deed of Trust") is made as July 12, 2021, by DESERT COLOR ST. GEORGE, LLC, a Utah limited liability company ("Trustor"), having an address of 730 N. 1500 West, Orem, Utah 84057, in favor of First American Title Insurance Company ("Trustee"), having an address of 50 East 100 South, Suite 100, St. George, Utah 84770, for the benefit of ALTABANK, a Utah corporation, together with its successors and assigns ("Bank"), having an address of 2176 N. Main Street, North Logan, Utah 84341.

ARTICLE 1.

PARTIES, PROPERTY, AND DEFINITIONS

The following terms and references shall have the meanings indicated:

- 1.1 **Borrower:** Desert Color St. George, LLC, a Utah limited liability company.
- 1.2 **SITLA Lease:** The Development Lease Number 1100, dated September 11, 2017, between The State of Utah, acting through the School and Institutional Trust Lands Administration ("SITLA"), as "Lessor" and Borrower, as "Lessee", a Memorandum of which, dated September 11, 2017, was recorded on September 17, 2017, as Entry No. 20170037014 with the Washington County Recorder, State of Utah, which, with respect to this Deed of Trust, relates only to the leasehold real property interest described in Exhibit A-2 (Desert Color Resort Phase 5 – SITLA Leasehold) and Exhibit A-3 (Sage Haven – SITLA Leasehold).
- 1.3 **Note:** The Revolving Promissory Note of even date herewith, executed by Borrower, payable to the order of Bank in the stated principal amount of \$5,000,000.00, which evidences a revolving line of credit provided by Bank to Borrower, together with all renewals, extensions, and modifications of the Note.
- 1.4 **Loan Agreement:** The Loan Agreement of even date herewith executed by and between Borrower and the Bank, and all renewals, extensions, and modifications of the Loan Agreement. All capitalized terms not otherwise defined herein shall bear the meaning given to them in the Loan Agreement.
- 1.5 **Real Property:** The real property described in Exhibit A-1 (Clubhouse – Desert Color Fee Title), Exhibit A-2 (Desert Color Resort Phase 5 – SITLA Leasehold), and Exhibit A-3 (Sage Haven – SITLA Leasehold) (collectively the "Real Property"), attached hereto and by this reference incorporated

herein, with all other right, title and interest of Trustor in the following with respect to the Real Property, whether now owned or hereafter acquired by Trustor:

(a) All right, title and interest under the SITLA Lease with respect to the real property described in Exhibits A-2 (Desert Color Resort Phase 5 – SITLA Leasehold) and A-3 (Sage Haven – SITLA Leasehold), whether now owned or hereafter acquired, including without limitation all fee title obtained by Trustor through the exercise of any option to purchase given by the SITLA Lease; provided, however, that this Deed of Trust shall not encumber fee title to real property under the SITLA Lease while such fee title is owned by SITLA;

(b) All improvements now or hereafter located on the Real Property and all easements and appurtenances thereto;

(c) The land lying within any street or roadway adjoining the Real Property; any vacated or hereafter vacated street or alley adjoining the Real Property; and any strips and gores adjoining the Real Property;

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions (“Leases”) relating to the use and enjoyment of all or any part of the premises and improvements located on the Real Property, and any and all guaranties and other agreements relating to or made in connection with any of such Leases;

(e) All and singular the passages, waters, water rights (whether tributary or non-tributary or not non-tributary), water courses, riparian rights, wells, well permits, water stock, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the Real Property, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license, and the reversion and reversions and remainder and remainders thereof; and

(f) All machinery, apparatus, equipment, fittings, fixtures (whether actually or constructively attached or incorporated, and including all trade, domestic, and ornamental fixtures) now or hereafter located in, upon, or under the Real Property or improvements and used or usable in connection with any present or future operation thereof, including but not limited to all lighting, utility, and power equipment; engines; pipes; pumps; tanks; motors; conduits; utility systems, plumbing, lifting, cleaning, fire prevention, fire extinguishing, signage, heating, air-conditioning; communication apparatus; water heaters; ranges; furnaces; appliances, refrigerators, stoves; shades, awnings, screens, storm doors and windows; attached cabinets; rugs, carpets and draperies and all additions thereto and replacements therefor;

1.6 Tangible Personal Property All right, titles and interests of Trustor in and to the following, with respect to the Real Property (the “Tangible Personal Property”):

(a) all goods, trade fixtures, fixtures, inventory, furnishings, fittings, machinery, apparatus, equipment, building and other construction materials, supplies, and other tangible personal property of every nature now owned or hereafter acquired by Trustor and used, intended for use, or reasonably required in the development, construction, reconstruction, alteration, repair, or operation of the Property and any improvements or infrastructure located thereon, together with all accessions thereto, replacements and substitutions therefor, and proceeds thereof, including, without limitation, to the extent not deemed to be real property under this Deed of Trust, all apparatus, machinery, motors, elevators, fittings, equipment, and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment, fixtures and appurtenances thereto.

1.7 Intangible Personalty: All right, title and interest of Trustor in and to the following, with respect to the Real Property ("Intangible Personalty"):

(a) all of the rents, royalties, income (including, without limitation, operating income), receipts, revenues, issues, and profits of and from the use, operation, or enjoyment of the Real Property and improvements (collectively the "Income"), whether such Income is attributable to the period, or is collected, prior to or subsequent to any default by Borrower;

(b) all plans and specifications for the improvements on the Real Property; soil, environmental, engineering, land planning maps, surveys and other studies and reports concerning the Real Property or prepared for the orderly planning and development of the Real Property, including all plans, drawings and studies concerning the platting or replatting of the Real Property; all contracts and subcontracts relating to the improvements on the Real Property, or any thereof;

(c) all awards and payments, including interest thereon, resulting from the exercise of any right of eminent domain or any other public or private taking of, casualty or injury to, or decrease in the value of, any of the Real Property, including without limitation all property insurance payments, proceeds and policies related to the Real Property;

(d) all of the licenses, permits, franchises, and other entitlements to use and all rights thereto which have been issued by or which are pending before any governmental or quasi-governmental agency which are necessary or appropriate for the Property;

(e) all funds, accounts, operating accounts, accounts receivable, deposit accounts, escrow accounts, monies, claims, causes of action, rights to payment, prepaid insurance and other prepaid items, contracts, contract rights, refunds and rebates, maintenance contracts, maintenance warranties, continuing agreements, security deposits, general intangibles and payment intangibles associated with the Property, and insurance proceeds;

(f) all water taps, sewer taps, building permits, curb cut permits, storm water discharge permits, refunds, rebates or deposits due or to become due from any utility companies or governmental entity;

(g) the absolute right to Trustor's interest in any trade name used by Trustor in connection with the Property and all of Trustor's rights in and to contract rights, leases, concessions, trade names, trademarks, service marks, logos, operating systems, trade secrets, technology and technical information, copyrights, warranties, licenses, plans, drawings and other items of intangible personal property relating to the ownership or operation of the Property; and

(h) all other and greater rights and interests of every nature in such property and in the possession or use thereof and income therefrom, whether now owned or subsequently acquired by Trustor.

1.8 Property: The Real Property, the Tangible Personal Property and the Intangible Personalty are sometimes collectively called the "Property." It is specifically understood that the enumeration of any specific articles of the Property, including Tangible Personal Property and Intangible Personalty shall not exclude or be held to exclude any items of property not specifically mentioned.

Any capitalized terms not defined in Sections 1.1 through 1.8 of this Deed of Trust and not defined elsewhere in this Deed of Trust or in the Loan Agreement, shall bear the meaning given to them in Article 9 of the Code, defined below.

1.9 Secured Obligations: This Deed of Trust and the Property granted thereby shall be held for the purpose of securing the following (the "Secured Obligations"):

(a) The payment of the indebtedness as evidenced in the Note, which represents a revolving line of credit with Borrower having the right to reborrow principal that has been repaid on the terms and conditions set forth in the Agreement;

(b) The performance and observance of all terms, covenants, conditions, and provisions to be performed or observed by the Borrower or Trustor pursuant to the terms of:

(i) this Deed of Trust;

(ii) the Loan Agreement; and

(iii) any and all pledge or other security agreements, loan agreements, disbursement agreements, assignments (both present and collateral), side letters, as the same may be amended, modified or supplemented from time to time, being referred to hereinafter as "Related Agreements." The Note, this Deed of Trust, Related Agreements, Loan Agreement, and any and all other documents or instruments executed in connection with the foregoing to evidence or secure the Note shall be hereinafter collectively called the "Loan Documents".

(c) All amounts expended or advanced by Bank for the protection of its security, the enforcement of any Loan Document, or for any other reason permitted by the Loan Documents or applicable law.

1.10 Unsecured Guaranties and Environmental Indemnities. Notwithstanding anything in this Deed of Trust or the Loan Documents to the contrary, this Deed of Trust shall not secure any guaranty or environmental indemnity agreement, which shall remain unsecured obligations of the obligors thereunder.

ARTICLE 2. GRANTING CLAUSE

2.1 Grant to Trustee. As security for the Secured Obligations, Trustor hereby grants, bargains, sells, and conveys all right, title, and interest of Trustor in and to the Property, to Trustee and its successors and assigns, in trust forever, WITH POWER OF SALE, for the use and benefit of Bank and its successors and assigns, subject to all provisions hereof.

2.2 Security Interest to Bank. As additional security for the Secured Obligations, Trustor hereby grants to Bank a security interest in the Tangible Personal Property and in the Intangible Personal Property and in such of the Real Property as may be deemed personal property (collectively, the "Collateral"). To the extent any of the Collateral may be or has been acquired with funds advanced by Bank under the Loan Documents, this security interest is a purchase money security interest. This Deed of Trust constitutes a Security Agreement under the Uniform Commercial Code of Utah (the "Code") with respect to any part of the Property and Collateral that may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate, all of the terms, provisions, conditions and agreements contained in this Deed of Trust pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property, and the following provisions of this section shall not limit the generality or applicability of any other provision of this Deed of Trust but shall be in addition thereto:

(a) The Collateral shall be used by Trustor solely for business purposes, being installed upon or owned in connection with the real estate comprising part of the Property for Trustor's own use or as the equipment and furnishings furnished by Trustor, as owner, to tenants of the Property;

(b) The Tangible Personal Property shall be kept at the real estate comprising a part of the Property, and shall not be removed therefrom without the consent of Bank and the Tangible Personal Property may be affixed to such real estate but shall not be affixed to any other real estate;

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

(d) The terms and provisions contained in this section and in Section 7.5 (Enforcement of Security Interests) of this Deed of Trust shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code;

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

(f) The Trustor agrees that Bank may, to the extent permitted by applicable law, prepare and file financing statements, amendments thereto, and continuation statements without the signature of the Trustor and file any financing statement, amendment thereto or continuation statement electronically.

ARTICLE 3 TRUSTOR'S TITLE AND AUTHORITY

3.1 Warranty of Title. Trustor represents and warrants to Bank that Trustor has good and marketable title to the Property (whether in fee title or as a leasehold), subject only to the lien of general taxes for the current year and those additional matters, if any, set forth in the title insurance policy issued to Bank insuring this Deed of Trust ("Permitted Exceptions"). Trustor further represents and warrants to Bank that Trustor is the absolute owner of the Collateral, free of any liens, encumbrances, security interests, and other claims whatsoever, except insofar as the Collateral may be encumbered by the lien of general taxes for the current year which are not yet due and payable. Trustor, for itself and its successors and assigns, hereby agrees to warrant and forever defend, all and singular, all of the Property and property interest granted and conveyed pursuant to this Deed of Trust, against every person whomsoever lawfully claiming, or to claim, the same or any part thereof, subject to the Permitted Exceptions. The warranties contained in this section shall survive foreclosure of this Deed of Trust, and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property or the Collateral pursuant to any such foreclosure.

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

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

ARTICLE 4. TRUSTOR'S AFFIRMATIVE COVENANTS

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

4.2 Payment of Taxes.

(a) Property Taxes. Trustor will pay, before delinquency, all taxes and assessments, including without limitation, general, special and metropolitan district taxes, water charges, sewer service charges (collectively, the "Impositions"), which may be levied or imposed at any time against Trustor's interest and estate in the Property or the Collateral. Within ten (10) days after request by Bank, Trustor will deliver to Bank an official receipt for such payment or other evidence that such payment has been made.

(b) Deposit for Taxes. Upon the occurrence of and during an Event of Default or a failure to pay taxes, after applicable cure periods and at Bank's option and election, Trustor shall deposit with Bank an amount equal to 1/12th of the amount which Bank estimates will be required to make the next annual payment of Impositions, multiplied by the number of whole and partial months which have elapsed in the current year. After such election, with each monthly payment under the Note, Trustor will deposit with Bank an amount equal to 1/12th of the amount which Bank estimates will be required to pay the next required installment or payment of Impositions. The purpose of these provisions is to provide Bank with sufficient funds on hand to pay all such Imposition charges thirty (30) days before the date on which they become past due. Provided no Event of Default exists hereunder or under any Loan Document, Bank will apply the amounts so deposited to the payment of such Imposition when due, but in no event will Bank be liable for any interest on any amount so deposited, and the money so received may be held and commingled with Bank's own funds. If the funds so deposited are insufficient to pay the Impositions for any year when the same shall become due and payable, the Trustor shall, within ten (10) days after receipt of written demand therefor, deposit such additional funds as may be necessary to pay such Impositions in full.

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

(d) Right to Contest. Notwithstanding any other provision of this section, Trustor will not be deemed to be in default solely by reason of Trustor's failure to pay any Impositions so long as, in Bank's reasonable judgment, each of the following conditions is satisfied:

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

(ii) Nonpayment of such Impositions will not result in the loss or forfeiture of any Property encumbered hereby or any interest of Bank therein.

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

4.3 Maintenance of Insurance. Trustor shall provide and maintain policies of insurance on the Property in accordance with the Loan Agreement, the SITLA Lease or as otherwise required by Bank.

(a) Deposit for Premiums. Upon the occurrence of and during an Event of Default or a failure to pay insurance premiums, after applicable cure periods and at Bank's option and election, Trustor shall deposit with Bank an amount equal to 1/12th of the amount which Bank estimates will be required to make the next annual payments of the premium for the policies of insurance referred to in this section, multiplied by the number of whole and partial months which have elapsed since the most recent policy anniversary date for each such policy ("Insurance Premium"). After such election, with each monthly payment under the Note, Trustor will deposit an amount equal to 1/12th of the amount which Bank estimates will be required to pay the next required annual premium for each insurance policy referred to in this section. The purpose of these provisions is to provide Bank with sufficient funds on hand to pay all such Insurance Premiums thirty (30) days before the date on which they become past due. Trustor shall, within ten (10) days after receipt of demand therefor, deposit such additional funds as are necessary to make up any deficiencies in amounts necessary to pay such Insurance Premiums when due. Provided no Event of Default exists hereunder or under any Loan Document, Bank will apply the amounts so deposited to the payment of such Insurance Premiums when due, but in no event will Bank be liable for any interest on any amount so deposited, and the money so received may be held and commingled with Bank's own funds.

(b) Renewal Policies. Not less than thirty (30) days prior to the expiration date of each insurance policy as required above, Trustor will deliver to Bank a copy of an appropriate renewal policy certified by Trustor as complete and accurate, together with evidence satisfactory to Bank that the applicable premium has been prepaid.

(c) Application of Hazard Insurance Proceeds. Trustor will give immediate written notice to Bank of any loss or claim, and Bank may make proof of loss if not made promptly by Trustor. Each insurance company is hereby authorized and directed to make payment for such loss directly to Bank instead of to Trustor or to Trustor and Bank jointly. Insurance proceeds or any part thereof may be applied by Bank, at its option, either to the reduction or payment of the Secured Obligations or to the repair, rebuilding and restoration of the Property lost, damaged or destroyed, but Bank shall not be obligated to ensure the proper application of any amount paid over to Trustor. Irrespective of the dollar amount of the loss or claim, Trustor shall provide Bank with sufficient documentation and information necessary or required by Bank to verify and confirm the exact nature and extent of the damage or destruction to the Property and the amount of funds required to repair or rebuild the Property, together with a budget (which shall be subject to Bank's approval) describing the repair or restoration work to be performed and the costs of labor and material for each stage of repair or restoration work. In the event

that proceeds are used for the repair, rebuilding and restoration of the Property, insurance proceeds shall be placed in a segregated account with Bank and used for the repair, rebuilding and restoration of the insured loss, through such procedures and with such safeguards for release of such proceeds and payment of construction and related expenses as Bank customarily imposes for advances of construction loan funds, which may include requirements that: (i) Trustor first expend or deposit into the escrow account any difference between the total cost of repair, rebuilding and restoration and the amount of such proceeds; (ii) Trustor, at its expense, promptly prepare and submit to Bank all plans and specifications necessary for the restoration and repair of the damaged Property, together with evidence acceptable to Bank setting forth the total expenditure needed for the restoration and repair based upon a fixed price contract with a reputable builder; (iii) the plans and specifications and all other aspects of the proposed restoration and repair be subject to Bank's approval in the exercise of its reasonable discretion; (iv) Trustor commence restoration and repair of the damaged Property only after Bank shall have notified Trustor in writing that the use of proceeds for restoration and repair is allowable under this section, that the required safeguards, procedures and assignments described in this section are in place and that the plans and specifications and all other aspects of the proposed restoration have been approved by Bank, and Trustor shall thereafter proceed diligently with the restoration and repair until completed; (v) disbursements be made from the escrow account for the restoration and repair in accordance with a disbursement schedule; and (vi) all funds held in the escrow account be assigned to Bank as further security for the Obligations. Any insurance proceeds not used for repair or restoration of the Property shall be applied to the last maturing installment of principal due and owing under the Note. The Property as rebuilt or restored shall be of at least equal value and substantially identical character as prior to the damage or destruction.

(d) Successor's Rights. Any person who acquires title to the Property or the Collateral upon foreclosure hereunder will succeed to all of Trustor's rights under all policies of insurance maintained pursuant to this section, including, without limitation, all rights to all claims under all such insurance policies regardless of the nature of such claim or when such claim arose.

4.4 Maintenance and Repair of Property and Collateral. Trustor will at all times maintain the Property and the Collateral in good condition and repair, and will diligently prosecute the completion of any infrastructure, building or other improvement which is at any time in the process of construction on the Property in full compliance with all building codes and other governmental requirements and in accordance with the Loan Agreement. Trustor shall constantly maintain and shall not diminish in any respect nor materially alter the Property during the term of this Deed of Trust except as required by law or municipal ordinance, without the prior written consent of Bank. Trustor will promptly repair, restore, replace, or rebuild any part of the Property or the Collateral which may be affected by any casualty or any public or private taking or injury to the Property or the Collateral. Any repair, restoration, replacement, or rebuilding shall be consistent with all applicable laws and regulations and the Loan Agreement. All costs and expenses arising out of the foregoing shall be paid by Trustor whether or not the proceeds of any insurance or eminent domain shall be sufficient therefor. Trustor will comply with all statutes, ordinances, and other governmental or quasi-governmental requirements and private covenants relating to the ownership, construction, use, or operation of the Property and the Collateral, including but not limited to any environmental or ecological requirements, legislation or regulations with respect to the ADA. Bank and any person authorized by Bank may enter and inspect the Property at all reasonable times, and may inspect the Collateral, wherever located, at all reasonable times.

4.5 Performance of Lease Obligations. Trustor will perform promptly all of Trustor's obligations under or in connection with the Leases.

4.6 Management. The Trustor will provide and maintain good and efficient management of the Property satisfactory to Bank. Trustor shall obtain Bank's advance written approval of any

management provided, and of any contract therefor or assignment thereof, which written approval shall not be unreasonably withheld.

4.7 Condemnation. Should the Property or any part thereof be taken or damaged by reason of any public improvements or condemnation proceeding, Bank shall be entitled to receive independently and solely all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, right of action and proceeds, are hereby assigned to Bank, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on the Secured Obligations in such order as Bank may determine. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Bank may request.

4.8 Mechanics' Liens.

(a) Trustor shall timely comply with all requirements of Utah Code Ann. § 38-1a-101 et seq. with regard to filings and notices. Trustor shall provide to Bank copies of all notices related to mechanics or materialmen liens filed by any party with respect to the Property.

(b) Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Property (except Permitted Exceptions), or any part thereof or interest therein whether inferior or superior to this Deed of Trust and keep and maintain the same free from the claim of all persons supplying labor, services or materials that will be used in connection with or enter into the construction of any and all buildings or improvements now being erected or that hereafter may be erected on the Property regardless of by whom such services, labor or materials may have been contracted unless otherwise authorized in writing by Bank.

(c) If Bank shall fail to remove and discharge any such lien, encumbrance or charge to the extent required in Section 4.8(b) above, or if Trustor shall dispute the amount thereof in contravention of the requirements hereof, then, in addition to any other right or remedy of Bank, Bank may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the release of the Property from the effect of such lien, encumbrance or charge. Trustor shall, immediately upon demand therefor by Bank, pay to Bank an amount equal to all costs and expenses incurred by Bank in connection with the exercise by Bank of the foregoing right to discharge any such lien, encumbrance or charge, including costs of any bond or additional security, together with interest thereon from the date of such expenditure at the interest rate in effect in the Note, plus costs and attorneys' fees.

4.9 Defense of Actions. Trustor will defend, at Trustor's expense, any action, proceeding or claim which affects any Property encumbered hereby or any interest of Bank in such Property or in the Secured Obligations, and will indemnify and hold Bank harmless from all loss, damage, cost, or expense, including reasonable attorneys' fees, which Bank may incur in connection therewith except to the extent such loss is caused by Bank's gross negligence or intentional acts.

4.10 Inventories; Assembly of Tangible Personal Property. Trustor will, from time to time at the request of Bank, supply Bank with a current inventory of the Tangible Personal Property, in such detail as Bank may require. Upon the occurrence of any Event of Default hereunder, Trustor will, at Bank's request assemble the Tangible Personal Property and make the Tangible Personal Property available to Bank at any place designated by Bank which is reasonably convenient to both parties.

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

4.12 Parking Requirements. Trustor shall maintain at all times sufficient parking spaces to comply with the parking requirements of all zoning and other regulations affecting the Property.

4.13 Financial Statements and Inspection of Records. Trustor, at Trustor's expense, shall furnish to Bank the financial and other reports required by the Loan Agreement.

4.14 Security Deposits. If required by the Bank, Trustor shall keep and maintain in a separate bank account with Bank, any security deposits or advance payments received from tenants in lieu of security deposits. Upon the Bank's request, the Bank shall be named on the bank account and no funds shall be withdrawn therefrom without the prior written consent of the Bank.

4.15 Off-Set. All sums payable by Trustor under this Deed of Trust shall (unless otherwise specifically provided in this Deed of Trust) be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Property or any part thereof; (b) any restriction or prevention of or interference with any use of the Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Bank, or any action taken with respect to this Deed of Trust by any trustee or receiver of Bank, or by any court, in any such proceeding; (e) any claim which Trustor has or might have against Bank; (f) any default or failure on the part of Bank to perform or comply with any of the terms, covenants or conditions of this Deed of Trust or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

4.16 The SITLA Lease. With respect to the SITLA Lease:

(a) Trustor will pay all rents and will strictly observe and perform on a timely basis all other terms, covenants, and conditions of the SITLA Lease. Trustor will indemnify, defend, and hold Bank harmless against all losses, liabilities, actions, suits, proceedings, costs including reasonable attorneys' fees claims, demands, and damages whatsoever which may be incurred by reason of Trustor's failure to pay rents or strictly observe or perform under the SITLA Lease.

(b) Trustor further agrees (1) not to surrender, terminate, or cancel the SITLA Lease, and (2) not to modify, change, supplement, alter, or amend the SITLA Lease in any material respect, either orally or in writing, without Bank's prior written consent. Any attempt by Trustor to do any of the foregoing without Bank's prior written consent will be void and of no force and effect. At Bank's option, Trustor will deposit with Bank as further security all original documents relating to the SITLA Lease and the leasehold interest in the Property. No estate in the Property, whether fee title to the leasehold premises, the leasehold estate, or any subleasehold estate, will merge without Bank express written consent, rather these estates will remain separate and distinct, even if there is a union of these estates in

the landlord, Trustor, or a third party who purchases or otherwise acquires the estates. Trustor further agrees that if Trustor acquires all or a portion of the fee simple title, or any other leasehold or subleasehold title to the Property, that title will immediately become subject to, and encumbered by, this Trust Deed, and Trustor will execute, deliver and record all documents necessary or appropriate to affirm that such title is encumbered by this Trust Deed.

(c) Trustor will promptly notify Bank in writing (1) if Trustor or the landlord is in default in the performance or observance of any of the terms, covenants, or conditions which Trustor is to perform or observe under the SITLA Lease; (2) if any event occurs which would constitute a default under the SITLA Lease; (3) if any notice of default is given to Trustor by the landlord under the SITLA Lease; (4) if, pursuant to the SITLA Lease, any proceeds received for the Property are deposited with someone other than Bank, whether received from any insurance on the property or from the taking of any or all of the Property by eminent domain; and (5) if any arbitration or appraisal proceedings are requested or instituted pursuant to the SITLA Lease.

(d) The rights of Bank under this Deed of Trust are subject to the rights of SITLA under the SITLA Lease. SITLA's rights and remedies upon a default by Borrower under the SITLA Lease are set forth in Article 25 of the SITLA Lease.

ARTICLE 5. TRUSTOR'S NEGATIVE COVENANTS

5.1 Waste. Trustor will not commit or permit any waste with respect to the Property or the Collateral.

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

5.3 Disposition of Property or Beneficial Interest in Trustor. Trustor hereby agrees not to sell or transfer any right, title or interest in or to the Property or any portion thereof, whether voluntarily or involuntarily, without the prior written consent of Bank.

5.4 Transfer or Removal of Tangible Personal Property. Trustor will not sell, transfer or remove from the Real Property all or any material part of the Tangible Personal Property, unless the items sold, transferred, or removed are simultaneously replaced with similar items of equal or greater value.

5.5 Further Encumbrance of Collateral. Trustor will not create or permit any lien or other encumbrances with respect to the Collateral except for a Permitted Lien (as defined in the Loan Agreement).

5.6 Change in Name, Location of Collateral, Etc. Without giving at least thirty (30) days' prior written notice to Bank, the Trustor shall not: (a) change its name, identity structure, or jurisdiction of organization; (b) change the location of its place of business (or chief executive office if more than one place of business); or (c) add to or change any location at which any of the Collateral is stored, held or located, without first notifying Bank of Trustor's intention to do so and shall execute and deliver to Bank

modifications or supplements of this Deed of Trust (and to any financing statement which may be filed in connection herewith) as Bank may require.

5.7 Improper Use of Property or Collateral. Trustor will not use the Property or the Collateral for any purpose or in any manner, or take any action with respect to the Property which violates any applicable law, ordinance, or other governmental requirement, the requirements or conditions of any insurance policy, or any private covenant.

ARTICLE 6. EVENTS OF DEFAULT

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

6.1 Failure to Pay. Default shall be made in the payment of any installment of principal or interest on the Note or any other sum under the Loan Documents when due.

6.2 Other Event of Default. The occurrence of an "Event of Default" as defined in the Loan Agreement.

6.3 Superior Lien Against the Property. The assertion of any claim of priority over this Deed of Trust, by title, lien, or otherwise in any legal, administrative, or equitable proceeding, unless such assertion be withdrawn or effective action satisfactory to Bank commenced (and thereafter diligently prosecuted) and Bank is secured against any loss or damage therefrom, within sixty (60) days of the assertion of such claim.

6.4 Abandonment. The actual or constructive abandonment of all or a substantial portion of the Property or the Collateral (such abandonment constituting an assignment to Bank, at Bank's option, of Trustor's interest in any lease or contract now or hereafter affecting the abandoned property).

6.5 Judgment. A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Property or a material part of the Collateral, or any judgment involving monetary damages shall be entered against Trustor, guarantor, or any other maker of the Note which shall become a lien on the Property or any portion thereof or interest therein and such execution, attachment, or similar process or judgment is not released, bonded, satisfied, vacated, or stayed within thirty (30) days after its entry or levy.

ARTICLE 7. BANK'S REMEDIES

Immediately upon or any time after the occurrence of any Event of Default hereunder, Bank may exercise any remedy available at law or in equity, including but not limited to those listed below and those listed in the other Loan Documents, in such sequence or combination as Bank may determine in Bank's sole discretion:

7.1 Performance of Defaulted Obligations. Bank may make any payment or perform any other obligation under the Loan Documents which Trustor has failed to make or perform, and Trustor hereby irrevocably appoints Bank as the true and lawful attorney-in-fact for Trustor to make any such payment and perform any such obligation in the name of Trustor, which appointment is coupled with Bank's interest in the Property and the Collateral. All payments made and expenses (including attorneys' fees and legal assistant's fees) incurred by Bank in this connection, together with interest thereon at the

Default Rate, as set forth in the Note, from the date paid or incurred until repaid, will be part of the Secured Obligations and will be immediately due and payable by Trustor to Bank.

7.2 Specific Performance and Injunctive Relief. Notwithstanding the availability of legal remedies, Bank will be entitled to obtain specific performance, mandatory or prohibitory injunctive relief, or other equitable relief requiring Trustor to cure or refrain from repeating any default.

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

7.4 Possession of Property. Bank may enter and take possession of the Property without seeking or obtaining the appointment of a receiver, may employ a managing agent for the Property, and may complete the development and construction of the Improvements described in the Loan Agreement, either in Bank's name or in the name of Trustor.

7.5 Enforcement of Security Interests. Bank may exercise all rights of a secured party under the Code with respect to the Collateral, including but not limited to taking possession of, holding, and selling the Collateral 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 Bank's giving of such notice to Trustor 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. Bank shall have all of the rights which Utah law accords the holder of real and personal property security for an obligation to conduct separate foreclosures, or a "unified" foreclosure, of some or all of its "mixed" real and personal property security.

7.6 Foreclosure Against Property. Bank may foreclose this Deed of Trust, insofar as it encumbers the Property, either by judicial action or through a trustee foreclosure sale through the Trustee in the manner provided by statute.

(a) If this Deed of Trust encumbers more than one parcel of real estate, foreclosure may be by separate parcel or lot or en masse, as Bank may elect in its sole discretion. Foreclosure through Trustee will be initiated by Bank's filing of its demand for sale with Trustee. If the power of sale is invoked, Trustee will execute a written notice of the occurrence of an Event of Default and of Bank's election to cause the Property to be sold and will record such notice in each county in which the Property is located. Bank or Trustee will mail notice of default in the manner provided by the laws of Utah to Trustor and to such other persons as the laws of Utah prescribe. Trustee will give public notice of sale and will sell the Property according to the laws of Utah. Trustee may sell the Property at the time and place and under the terms designated in the notice of sale in one or more parcels. Trustee may postpone sale of all or any part of the Property by public announcement at the time and place of any previously scheduled sale. Bank or Bank's designee may purchase the Property at any sale. Instead of paying cash for such Property, Bank may settle for the purchase price by crediting the sales price of the Property against the Secured Obligations. Within a reasonable time after the sale, Trustee will deliver to the purchaser at the sale, a deed conveying the Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed will be prima facie evidence of the truth of the statements made therein.

(b) All reasonable fees, costs and expenses of any kind incurred by the Trustee or Bank in connection with, or preparation for, foreclosure of this Deed of Trust, including, without limitation, the costs of any appraisals, engineering or environmental testing and evaluations of the Property obtained by Bank, all costs of any receivership for the Property advanced by Bank, and all attorneys' fees, publication costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree), and costs of procuring all title commitments, title searches, title insurance

policies, and similar data with respect to title as Bank may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale the true condition of title to or value of the Property, incurred by Bank, shall constitute a part of the Secured Obligations and may be included as part of the amount owing from Trustor to Bank at any foreclosure sale. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney employed by Bank in any litigation or proceeding affecting this Deed of Trust, the Note or the Property, including probate, bankruptcy proceedings, proceedings to obtain a receiver, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the default interest rate, as more particularly defined in the Note and shall be secured by this Deed of Trust.

(c) The proceeds of any sale under this section shall be applied first to the fees and expenses of the Trustee and Bank incurred in connection with the sale, and then to the reduction or discharge of the Secured Obligations; any surplus remaining shall be paid over to Trustor or to such other person or persons as may be lawfully entitled to such surplus.

(d) Nothing in this section dealing with foreclosure procedures or specifying particular actions to be taken by Bank or by Trustee or any person conducting the foreclosure sale shall be deemed to contradict or add to the requirements and procedures now or hereafter specified by Utah law, and any such inconsistency shall be resolved in favor of Utah law applicable at the time of foreclosure.

7.7 Appointment of Receiver. Bank shall be entitled, as a matter of contractual right and without regard to the value of any security for the Secured Obligations or the solvency of any person liable therefor, to the appointment of a receiver (a "Receiver") for the Property, the Leases, and the Rents and Revenues upon *ex parte* application to any court of competent jurisdiction, without notice. Trustor hereby expressly waives any right to a hearing or notice of a hearing prior to the appointment of a Receiver. Trustor waives any requirement or necessity of the posting of a receiver's bond.

7.8 Authority of Receiver. Should a Receiver be appointed to take possession of the Property, such Receiver shall be authorized and empowered to generally do anything which Trustor could legally do if Trustor were in possession of the Property, such additional powers and authority as may be set forth in any order appointing the Receiver, and, without limitation, the Receiver shall be specifically authorized as follows:

(a) To take possession of the Property, Leases, and Rents and Revenues and any business conducted by Trustor or any other person thereon and any business assets used in connection therewith and any Collateral in which Bank has a security interest granted by Trustor and, if the Receiver deems it appropriate, to operate the same;

(b) To exclude Trustor and Trustor's agents, servants, and employees from the Property;

(c) With or without taking possession of the Property, to collect the Rents and Revenues, including those past due and unpaid and security deposits;

(d) To rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms as Receiver shall determine, and to pay any leasing or rental commissions associated therewith;

(e) To market and sell the Property or any portion thereof;

(f) To complete any construction, improvements, maintenance or development which may be in progress;

(g) To undertake such repairs and alterations of the Property as Receiver may deem necessary or beneficial to preserve and protect the Property;

(h) To use all stores of materials, supplies and maintenance equipment on the Property and to replace and replenish such items at the expense of the receivership estate;

(i) To pay the operating expenses of the Property, including costs of management and leasing or marketing thereof (which shall include lease commissions, sale commissions), payments under contracts and agreements for development and construction;

(j) To pay all taxes and assessments against the Property and any property which is collateral for the Secured Obligations, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance;

(k) To borrow from the Bank such funds as may be reasonably necessary to the effective exercise of the Receiver's powers, on such terms as may be agreed upon by Receiver and Bank;

(l) All expenses incurred by Receiver or Receiver's agents shall constitute part of the Secured Obligations. Any revenues collected by Receiver shall be applied in accordance with the order appointing the Receiver. The risk of accidental loss, damage or casualty to the Property is assumed and undertaken by Trustor and, except for Bank's or Receiver's gross negligence or intentional misconduct, Bank and Receiver shall have no liability whatsoever for decline in value or loss of the Property.

(m) In addition to the foregoing and without limitation, Bank shall have all rights under the Utah Uniform Assignment of Rents Act and any other statutory rights and remedies provided with respect to the rights of a beneficiary under a trust deed to seek the appointment of a receiver.

7.9 Further Assurances. Upon issuance of a deed or deeds pursuant to foreclosure of this Deed of Trust, all right, title, and interest of the Trustor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by the Trustor. Trustor hereby agrees to execute all instruments of assignment or further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose. But nothing contained herein shall prevent Bank from terminating any subordinated Lease not approved by the Bank through such foreclosure.

7.10 Lifting of Automatic Stay. In the event that Trustor is the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or similar proceeding, federal or state, voluntary or involuntary, under any present or future law or act, Bank is and shall be irrevocably entitled to the automatic and absolute lifting of any automatic stay as to the enforcement of its remedies under the Loan Documents against the security for the Secured Obligations, including specifically the stay imposed by Section 362 of the United States Federal Bankruptcy Code, as amended. Trustor hereby consents to the immediate lifting of any such automatic stay, and specifically and expressly covenants and agrees not to contest any motion by Bank to lift such stay. Trustor expressly acknowledges and represents to Bank that the security for the Secured Obligations is not now and will never be necessary to any plan of reorganization of any type.

7.11 Possession of the Property. Upon the occurrence and during the continuance of any Event of Default hereunder and the acceleration of the indebtedness secured hereby or any portion thereof, Trustor, if an occupant of any unit or space in the Property or any part thereof, upon demand of Bank or Receiver, shall immediately surrender possession of the Property (or the portion thereof so occupied) to Bank or Receiver, and if Trustor is permitted to remain in possession of such unit, the possession shall be as a month to month tenant of Bank or Receiver and, on demand, Trustor shall pay to Bank or Receiver monthly, in advance, a reasonable rental for the space so occupied and in default thereof Trustor may be dispossessed. The covenants herein contained may be enforced by Bank or Receiver. Nothing in this section shall be deemed to be a waiver of the provisions of this Deed of Trust making the transfer of the Property or any part thereof in violation of the Loan Documents without Bank's prior written consent an Event of Default.

ARTICLE 8.

ASSIGNMENT OF SUBLEASES, OTHER LEASES, RENTS AND REVENUES

8.1 Assignment of Rents and Revenues. To further secure the Secured Obligations, Trustor does hereby sell, assign and transfer unto the Bank all rents, issues, profits, revenue, and income now due and which may hereafter become due under or by virtue of any Leases or any other leases, including all of Trustor's rights to any security deposits, earnest money deposits or any other forms of rent, revenue or proceeds of the foregoing (collectively "Rents and Revenues"), whether written or verbal, or any letting of, or of any agreement for the sale, use or occupancy of the Property or any part thereof, and all proceeds from, evidence of, and benefits and advantages to be derived therefrom, now or hereafter existing, whether or not with the Bank's approval. The Trustor does hereby appoint irrevocably the Bank its true and lawful attorney in its name and stead (with or without taking possession of the Property) to rent, lease or let any improvements located on the Property, upon such terms as said Bank shall, in its discretion, determine, and to collect all of said Rents and Revenues arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the Leases, or other agreements, written or verbal, or which may hereafter exist on the Property, on the condition that Bank hereby grants to Trustor a license to collect and retain such Rents and Revenues (but expressly not including the right to collect any rents more than one (1) month in advance or any amount to prepay, terminate, or "buy out" any Leases) so long as no Event of Default exists under the Loan Documents. Trustor expressly covenants to apply the Rents and Revenue received, after application for operating expenses permitted hereunder, to payment of the Secured Obligations as and when the same become due and in compliance with the Loan Documents. Such license shall be revocable by Bank upon notice to Trustor at any time after an Event of Default under the Loan Documents, and immediately upon any such revocation, Bank shall be entitled to receive, and Trustor shall deliver to Bank, any and all Rents and Revenues theretofore collected by Trustor which remain in the possession or control of Trustor and all Leases, and other such agreements. It is the intention of the Trustor to create and grant, and it is the intention of Bank to create and receive, a present and absolute assignment of all of the Leases, similar agreements, Rents and Revenues now due or which may hereafter become due, but it is agreed that the Bank's right to collect the Rents and Revenues is conditioned upon the existence of an Event of Default under the Loan Documents. Failure of Bank at any time or from time to time to enforce its rights under this ARTICLE 8 shall not in any manner prevent its subsequent enforcement, and Bank is not obligated to collect anything hereunder, but is accountable only for sums collected. Nothing contained herein shall be construed as constituting the Bank a mortgagee in possession in the absence of the taking of actual possession of the Property by the Bank. In the exercise of the powers herein granted to the Bank, no liability shall be asserted or enforced against the Bank, all such liability being expressly waived and released by Trustor.

8.2 Covenants Regarding Leases. Trustor agrees:

- (a) Not to execute any Leases affecting the Property or any part thereof without the prior written consent of Bank;
- (b) Not to collect any of the Rents for more than one (1) month in advance of the time when the same become due under the terms thereof;
- (c) Not to discount any future accruing Rents;
- (d) Not to execute any other assignments of said Leases or any interest therein or any of the Rents and Revenues thereunder;
- (e) That notwithstanding any variation of the terms of the Deed of Trust or any extension of time for payment thereunder or any release of part or parts of the Property, the Leases, Rents and Revenues hereby assigned, insofar as they relate to the unreleased Property, shall continue as additional security in accordance with the terms hereof; and
- (f) To perform all of the Trustor's covenants and agreements under the Leases and not to suffer or permit to occur any release of liability of the lessees or purchasers.

**ARTICLE 9.
MISCELLANEOUS PROVISIONS**

9.1 Time of the Essence. Time is of the essence with respect to all provisions of this Deed of Trust.

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

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

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

9.5 Preservation of Liability and Priority. Without affecting the liability of Trustor or of any other person (except a person expressly released in writing) for payment and performance of all of the Secured Obligations, and without affecting the rights of Bank with respect to any security not expressly released in writing, and without impairing in any way the priority of this Deed of Trust over the interests of any person acquired or first evidenced by recording subsequent to the recording hereof, Bank may,

either before or after the maturity of the Note, and without notice or consent: (a) release any person liable for payment or performance of all or any part of the Secured Obligations; (b) make any agreement altering the terms of payment or performance of all or any of the Secured Obligations; (c) exercise or refrain from exercising, or waive, any right or remedy which Bank may have under any of the Loan Documents; (d) accept additional security of any kind for any of the Secured Obligations; or (e) release or otherwise deal with any real or personal property securing the Secured Obligations. Any person acquiring or recording evidence of any interest of any nature in the Property or the Collateral shall be deemed, by acquiring such interest or recording any evidence thereof, to have agreed and consented to any or all such actions by Bank.

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

9.7 Notices. Any notice required or permitted to be given by Trustor or Bank under this Deed of Trust shall be in writing and shall be given in accordance with the terms of the Loan Agreement. Trustor requests that any notice of default and notice of sale be mailed to Trustor, addressed as follows:

DESERT COLOR ST. GEORGE, LLC
730 N. 1500 West
Orem, Utah 84057

9.8 Release. Upon payment and performance in full of all the Secured Obligations and all costs of releasing this Deed of Trust, Bank will execute and deliver to Trustor such documents as may be required to release this Deed of Trust of record.

9.9 Illegality. If any provision of this Deed of Trust is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Deed of Trust, the legality, validity, and enforceability of the remaining provisions of this Deed of Trust shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Deed of Trust a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If the rights and liens created by this Deed of Trust shall be invalid or unenforceable as to any part of the Secured Obligations, then the unsecured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on the Secured Obligations shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of the Secured Obligations.

9.10 Joint and Several Liability. Each Trustor shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

9.11 Successors in Interest. This Deed of Trust is binding upon Trustor and Trustor's successors and assigns, including all grantees and remote grantees of any interest of Trustor in the Property, and shall inure to the benefit of Bank, and its successors and assigns, and the provisions hereof shall likewise be covenants running with the land. However, this Section 9.11 does not waive the provisions of this Deed of Trust or the Loan Agreement that restrict transfers of Trustor's interest in the Property.

9.12 Governing Law. The laws of the State of Utah shall govern the validity, construction, enforcement, and interpretation of this Deed of Trust, without regard to principles of conflicts of laws.

9.13 Notice and Cure Periods. All notice and cure periods provided in this Deed of Trust or any other Loan Document shall run concurrently with any notice or cure periods provided by law. Without limiting the foregoing, Bank shall be entitled to exercise its remedies under this Deed of Trust if any event occurs that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder or would otherwise entitle Bank to accelerate any or all of the Obligations.

9.14 Survival. This Deed of Trust shall survive foreclosure of the liens created hereby, to the extent necessary to fulfill its purposes.

9.15 Captions. The captions and headings of various paragraphs of this Deed of Trust are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

9.16 Counterparts. This Deed of Trust may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same document.

9.17 JURY TRIAL WAIVER. AS PERMITTED BY APPLICABLE LAW, TRUSTOR KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHTS TO A TRIAL BEFORE A JURY IN CONNECTION WITH THIS DEED OF TRUST. TRUSTOR ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS AN IMPORTANT RIGHT, AND THAT TRUSTOR WAIVES SUCH RIGHT FREELY AND KNOWINGLY, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF ITS CHOOSING REGARDING THIS JURY TRIAL WAIVER AND THIS DEED OF TRUST.

****Signature on the following page****

1566164.03

Signed and delivered as of the date first mentioned above.

TRUSTOR:

DESERT COLOR ST. GEORGE, LLC,
a Utah limited liability company

By: Desert Color Manager, LLC, a Utah
limited liability company
Its: Manager

By: GWC Capital, LLC, a Utah limited
liability company

By: Brandon Henric
Name: Brandon Henric
Title: President

STATE OF UTAH

: ss.

COUNTY OF UTAH)

On this 19 day of July, 2021, before me a Notary Public, personally appeared Brandon Henric, known to me to be the President of GWC Capital, LLC, a Utah limited liability company, as the Sole Member of Desert Color Manager, LLC, a Utah limited liability company, as the Manager of Desert Color St. George, LLC, a Utah limited liability company, who executed the within instrument on behalf of said company therein named, and acknowledged to me that said company executed the same.



Michelle Griffiths
NOTARY PUBLIC

Residing in: SALEM, UT

My commission expires: 01/25/2025

EXHIBIT A-1
(Clubhouse – Desert Color Fee Title)

Real PARCEL 1:

CIVIC 1 AND 3, DESERT COLOR RESORT PHASE 1A, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE WASHINGTON COUNTY RECORDER'S OFFICE

EXHIBIT A-2
(Desert Color Resort Phase 5 – SITLA Leasehold)

Real property located in Washington County, State of Utah, described as follows:

DESERT COLOR RESORT PHASE 5:

BEGINNING AT A POINT WHICH IS SOUTH 01°14'25" WEST 107.19 FEET ALONG THE WEST SECTION LINE AND NORTH 90°00'00" EAST 13.41 FEET FROM THE WEST QUARTER CORNER OF SECTION 25, TOWNSHIP 43 SOUTH, RANGE 16 WEST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 29°34'27" EAST 33.00 FEET; THENCE SOUTH 60°25'33" EAST 4.84 FEET; THENCE NORTH 29°34'27" EAST 218.46 FEET; THENCE SOUTH 60°25'33" EAST 74.02 FEET; THENCE NORTH 29°34'27" EAST 144.85 FEET; THENCE SOUTH 60°25'33" EAST 220.00 FEET; THENCE SOUTH 51°54'15" EAST 283.05 FEET; THENCE SOUTH 48°43'35" EAST 28.45 FEET; THENCE SOUTH 48°56'06" EAST 285.76 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 62.70 FEET; THENCE SOUTHWESTERLY 94.93 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 86°44'44" TO THE POINT OF TANGENCY; THENCE SOUTH 37°48'38" WEST 150.70 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 108.50 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 115°09'21" TO A POINT OF NON-TANGENCY; THENCE SOUTH 11°54'59" WEST 77.64 FEET; THENCE SOUTH 21°16'43" WEST 22.19 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 598.50 FEET; THENCE NORTHWESTERLY 169.39 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 16°12'58", THE RADIAL DIRECTION BEARS NORTH 21°46'43" EAST, TO A POINT OF NON-TANGENCY; THENCE SOUTH 37°29'23" WEST 33.00 FEET; THENCE SOUTH 64°50'34" WEST 25.53 FEET; THENCE SOUTH 40°31'43" WEST 123.83 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE LEFT HAVING A RADIUS OF 668.00 FEET; THENCE SOUTHEASTERLY 404.97 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 34°44'06" THE RADIAL DIRECTION BEARS NORTH 42°45'48" EAST, TO THE POINT OF NON-TANGENCY SAID POINT BEING THE SOUTHWESTERLY CORNER OF THE DESERT COLOR RESORT PHASE 2A SUBDIVISION RECORDED AS DOCUMENT NO. 20190054450 IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, IN SAID COUNTY, IN THE STATE OF UTAH; THENCE ALONG THE SOUTHWESTERLY BOUNDARY OF SAID DESERT COLOR RESORT PHASE 2A SOUTH 82°04'43" EAST 2.49 FEET TO A POINT ON THE WESTERLY BOUNDARY OF LAGOON PARKWAY RECORDED AS DOCUMENT NO. 20190000314 IN THE OFFICE OF SAID WASHINGTON COUNTY RECORDER; THENCE ALONG SAID WESTERLY BOUNDARY OF LAGOON PARKWAY SOUTH 02°21'12" WEST 64.27 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF AUBURN HILLS PHASE 1 SUBDIVISION RECORDED AS DOCUMENT NO. 20190023357 IN THE OFFICE OF SAID WASHINGTON COUNTY RECORDER SAID POINT ALSO BEING A POINT ON THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 732.06 FEET; THENCE ALONG SAID NORTHERLY BOUNDARY THROUGH THE FOLLOWING FOUR (4) COURSES: NORTHWESTERLY 300.81 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°32'36", THE RADIAL DIRECTION NORTH 07°20'22" EAST, TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS 306.00 FEET; THENCE NORTHWESTERLY 46.37 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°40'57" TO THE

POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 294.00 FEET; THENCE NORTHWESTERLY 103.59 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20°11'17" TO A POINT OF COMPOUND CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 748.00 FEET; THENCE NORTHWESTERLY 39.62 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03°02'05" TO A POINT OF NON-TANGENCY; THENCE NORTH 41°14'22" WEST 113.62 FEET; THENCE NORTH 35°52'41" WEST 149.96 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 650.00 FEET; THENCE NORTHWESTERLY 454.55 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°04'04" TO THE POINT OF COMPOUND CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 60.00 FEET; THENCE SOUTHWESTERLY 42.07 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 40°10'12" TO THE POINT OF REVERSE CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 86.00 FEET; THENCE SOUTHWESTERLY 45.96 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 30°37'12" TO THE POINT OF TANGENCY; THENCE NORTH 85°29'44" WEST 92.88 FEET; THENCE NORTH 22°48'00" WEST 100.02 FEET; THENCE NORTH 29°09'12" EAST 41.06 FEET; THENCE NORTH 50°02'11" EAST 99.00 FEET; THENCE SOUTH 61°12'35" EAST 43.98 FEET; THENCE NORTH 33°50'55" EAST 155.62 FEET TO THE POINT OF BEGINNING.

**EXHIBIT A-3
(Sage Haven – SITLA Leasehold)**

Real property located in Washington County, State of Utah, described as follows:

Beginning at a point that lies South 88°52'59" East along the section line 434.99 feet and South 15.51 feet, from the North Quarter Corner of Section 36, Township 43 South, Range 16 West, Salt Lake Base and Meridian, and running thence South 31°57'57" East 31.05 feet; thence South 12°46'49" East 59.33 feet; thence South 13°33'30" East 60.48 feet; thence South 27°25'14" East 67.63 feet; thence South 23°30'38" East 45.46 feet; thence South 06°28'01" East 218.32 feet; thence South 05°52'55" East 86.05 feet; thence South 11°06'54" West 89.35 feet; thence South 28°51'49" West 95.27 feet; thence South 08°07'08" West 93.91 feet; thence South 00°18'58" East 76.86 feet; thence South 14°36'04" East 142.07 feet; thence South 11°38'35" East 235.07 feet; thence South 10°57'00" East 51.88 feet; thence South 08°46'53" East 324.64 feet; thence South 06°16'42" East 191.35 feet; thence South 13°05'12" East 212.22 feet; thence South 18°56'56" East 68.86 feet; thence South 32°07'17" East 54.52 feet; thence South 20°15'44" East 61.42 feet; thence South 10°57'00" East 59.29 feet; thence South 03°58'47" East 20.91 feet; thence South 00°11'47" East 75.82 feet; thence South 08°38'10" West 230.81 feet; thence South 17°08'20" West 24.97 feet; thence North 88°43'13" West 90.42 feet; thence South 01°16'48" West 549.68 feet to a point on the south boundary of line for the state of Utah; thence along said state line the following two (2) courses: 1) North 88°43'10" West 1091.15 feet to state line marker No. 25, and 2) North 88°43'26" West 1224.83 feet; thence North 18°00'30" East 201.34 feet; thence North 17°59'22" East 118.92 feet; thence North 12°29'10" East 147.37 feet; thence North 13°14'12" East 133.37 feet; thence North 11°47'26" East 121.13 feet; thence North 11°57'25" East 5.32 feet; thence North 05°13'42" West 192.00 feet; thence North 34°12'05" West 109.30 feet; thence North 47°00'01" West 156.29 feet; thence North 33°57'47" West 142.77 feet; thence North 24°14'32" West 163.23 feet; thence North 24°14'31" West 47.89 feet; thence North 33°43'31" West 104.72 feet; thence North 41°39'46" West 129.67 feet; thence North 49°30'19" West 126.29 feet; thence North 55°35'35" West 98.43 feet; thence North 55°34'12" West 31.24 feet; thence North 38°42'27" West 6.46 feet; thence northeasterly along a 614.50 foot radius non-tangent curve to the left, (long chord bears North 45°14'03" East a distance of 108.60 feet), center point lies North 38°42'27" West through a central angle of 12°06'59", a distance of 108.80 feet; thence northeasterly along a 796.09 foot radius compound curve to the left, (long chord bears North 37°06'49" East a distance of 57.30 feet), center point lies North 50°49'26" West through a central angle of 04°07'29", a distance of 57.31 feet; thence northeasterly along a 712.00 foot radius non-tangent curve to the right, (long chord bears North 52°05'50" East a distance of 414.79 feet), center point lies South 54°50'16" East through a central angle of 33°52'10", a distance of 420.89 feet; thence easterly along a 585.50 foot radius compound curve to the right, (long chord bears North 81°14'50" East a distance of 247.77 feet), center point lies South 20°58'05" East through a central angle of 24°25'50", a distance of 249.65 feet; thence South 86°32'15" East 131.70 feet; thence southeasterly along a 14.00 foot radius curve to the right, (long chord bears South 41°21'26" East a distance of 19.86 feet), center point lies South 03°27'45" West through a central angle of 90°21'39", a distance of 22.08 feet; thence South 03°49'24" West 10.00 feet; thence South 86°10'36" East 62.00 feet; thence North 03°49'24" East 24.09 feet; thence northeasterly along a 14.00 foot radius curve to the right, (long chord bears North 47°12'36" East a distance of 19.23 feet), center point lies South 86°10'36" East through a central angle of 86°46'26", a distance of 21.20 feet; thence easterly along a 2038.00 foot radius reverse curve to the left, (long chord bears North 80°18'04" East a distance of 728.51 feet), center point lies North 00°35'49" East through a central angle of 20°35'31", a distance of 732.45 feet; thence easterly along a 5.00 foot radius reverse curve to the right, (long chord bears South 76°50'53" East a distance of 5.47 feet), center point lies South 19°59'41" East through a central angle of 66°17'36", a distance of 5.79 feet; thence easterly along a 5.00 foot radius reverse curve to the left, (long chord bears South 76°58'37" East a distance of 5.49 feet),

center point lies North $46^{\circ}17'54''$ East through a central angle of $66^{\circ}33'02''$, a distance of 5.81 feet; thence easterly along a 2044.00 foot radius compound curve to the left, (long chord bears North $69^{\circ}34'47''$ East a distance of 12.01 feet), center point lies North $20^{\circ}15'08''$ West through a central angle of $00^{\circ}20'12''$, a distance of 12.01 feet; thence easterly along a 54.50 foot radius reverse curve to the right, (long chord bears South $84^{\circ}32'04''$ East a distance of 47.88 feet), center point lies South $20^{\circ}35'19''$ East through a central angle of $52^{\circ}06'31''$, a distance of 49.57 feet; thence easterly along a 113.00 foot radius reverse curve to the left, (long chord bears South $67^{\circ}37'03''$ East a distance of 35.89 feet), center point lies North $31^{\circ}31'11''$ East through a central angle of $18^{\circ}16'29''$, a distance of 36.04 feet; thence southeasterly along a 64.50 foot radius reverse curve to the right, (long chord bears South $49^{\circ}45'52''$ East a distance of 49.47 feet), center point lies South $13^{\circ}14'43''$ West through a central angle of $53^{\circ}58'50''$, a distance of 51.35 feet; thence South $22^{\circ}46'27''$ East 10.00 feet; thence North $67^{\circ}13'33''$ East 88.00 feet; thence North $22^{\circ}46'27''$ West 10.00 feet; thence northerly along a 54.50 foot radius curve to the right, (long chord bears North $04^{\circ}12'58''$ East a distance of 49.47 feet), center point lies North $67^{\circ}13'33''$ East through a central angle of $53^{\circ}58'50''$, a distance of 51.35 feet; thence northeasterly along a 113.00 foot radius reverse curve to the left, (long chord bears North $22^{\circ}55'48''$ East a distance of 32.53 feet), center point lies North $58^{\circ}47'37''$ West through a central angle of $16^{\circ}33'10''$, a distance of 32.65 feet; thence northeasterly along a 54.50 foot radius reverse curve to the right, (long chord bears North $38^{\circ}22'10''$ East a distance of 43.84 feet), center point lies South $75^{\circ}20'47''$ East through a central angle of $47^{\circ}25'55''$, a distance of 45.12 feet; thence northeasterly along a 2055.00 foot radius reverse curve to the left, (long chord bears North $61^{\circ}35'01''$ East a distance of 36.00 feet), center point lies North $27^{\circ}54'52''$ West through a central angle of $01^{\circ}00'14''$, a distance of 36.00 feet; thence northeasterly along a 5.00 foot radius compound curve to the left, (long chord bears North $27^{\circ}48'24''$ East a distance of 5.49 feet), center point lies North $28^{\circ}55'06''$ West through a central angle of $66^{\circ}32'59''$, a distance of 5.81 feet; thence northeasterly along a 5.00 foot radius reverse curve to the right, (long chord bears North $27^{\circ}40'43''$ East a distance of 5.47 feet), center point lies North $84^{\circ}31'54''$ East through a central angle of $66^{\circ}17'38''$, a distance of 5.79 feet; thence northeasterly along a 2049.00 foot radius reverse curve to the left, (long chord bears North $59^{\circ}21'50''$ East a distance of 104.54 feet), center point lies North $29^{\circ}10'27''$ West through a central angle of $02^{\circ}55'24''$, a distance of 104.55 feet; thence northeasterly along a 814.00 foot radius compound curve to the left, (long chord bears North $42^{\circ}38'06''$ East a distance of 428.69 feet), center point lies North $32^{\circ}05'52''$ West through a central angle of $30^{\circ}32'05''$, a distance of 433.81 feet; thence northeasterly along a 716.00 foot radius reverse curve to the right, (long chord bears North $46^{\circ}03'59''$ East a distance of 459.09 feet), center point lies South $62^{\circ}37'57''$ East through a central angle of $37^{\circ}23'51''$, a distance of 467.34 feet; to the point of beginning.