

16-05-206-024  
174402-CAB

After recording Mail To:

THOMPSON HINE LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
Attn: David M. Lewis, Esq.

This document serves as a Fixture Filing under the Utah Uniform Commercial Code and should be filed and indexed in the real estate record not only as a deed of trust but also as a fixture filing.

This Deed of Trust constitutes a "Construction Mortgage" within the meaning of Utah Code Section 70A-9a-334(8) or any successor statute. The proceeds of the loan secured by this Deed of Trust are to be used by Trustor in part for the purpose of funding the construction and development or rehabilitation of the Property and Improvements described herein and are to be disbursed in accordance with the provisions of the Loan Documents (as hereinafter defined).

**DEED OF TRUST,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**Tax Parcel No. 16-05-206-024**

This DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "*Deed of Trust*") dated March 13, 2024, is made by VICTORY HEIGHTS LLC, a Utah limited liability company ("*Grantor*" or "*Borrower*"), whose address is whose address is 386 W 500 S, Suite 100, Salt Lake City, Utah 84101, in favor of Cottonwood Title Insurance Agency, Inc. ("*Trustee*"), whose address is 1996 East 6400 South, Suite 120, Murray, Utah 84121, for the benefit of KeyBank National Association, a national banking association, its successors and assigns ("*Beneficiary*"), whose address is 4910 Tiedeman Road, Mailcode OH-01-51-0570, Brooklyn, Ohio 44144, Attention: Community Development Lending.

This Deed of Trust secures an obligation incurred for the acquisition of an improvement on land.

Grantor's Organizational Identification Number: 12872625-0160

1. **Grant and Secured Obligations.**

1.1 **Grant.** For the purpose of securing payment and performance of the Secured Obligations defined and described in Section 1.2 below, Grantor hereby irrevocably and unconditionally grants, transfers, conveys and assigns to Trustee, in trust with power of sale, and with right of entry and possession, all estate, right, title and interest which Grantor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "*Property*"):

(a) The real property located in the County of Salt Lake, State of Utah, as described in Exhibit A, together with all existing and future easements and rights affording access to it (the "**Premises**"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Premises (the "**Improvements**"); together with

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements; together with

(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, and any and all guaranties and other agreements relating to or made in connection with any of such leases; together with

(e) All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements; together with

(f) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust, and any manufacturer's warranties with respect thereto; together with

(g) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements; together with

(h) All of Grantor's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the Budget, all Reserve Accounts (as defined in the Loan Agreement (defined below)) and any other bank accounts of Grantor; together with

(i) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Grantor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses,

applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally, and any builder's or manufacturer's warranties with respect thereto; together with

(j) All insurance policies pertaining to the Premises and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact; together with

(k) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory ("*Books and Records*"); together with

(l) All Grantor's right, title and interest in and to any Swap Transaction or Interest Rate Agreement or interest rate hedging program through the purchase by Grantor from Beneficiary of an interest rate swap, cap, or such other interest rate protection product, all whether now or hereafter entered into by Grantor with respect to the Loan, including, without limitation, any and all amounts payable to Grantor, any deposit account or accounts with the Beneficiary in the name of the Grantor for deposit of payments to Grantor in connection with any Swap Transaction, and any and all funds now or hereafter on deposit therein; together with

(m) All operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the Budget, and any other bank accounts of Grantor, including without limitation, the Operating Account; together with

(n) (i) All agreements heretofore or hereafter entered into relating to the construction, ownership, operation, management, leasing or use of the Premises or Improvements, (ii) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clause (i), (iii) any and all guarantees, warranties and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clauses (i) through (ii), (iv) all trade names, trademarks, logos and other materials used to identify or advertise, or otherwise relating to the Premises or Improvements, and (v) all building permits, governmental permits, licenses, variances, conditional or special use permits, and other authorizations now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing or use of the Premises or Improvements, to the fullest extent that the same or any interest therein may be legally assigned by Grantor; together with

(o) All rights of Grantor as Declarant under any covenants, conditions or restrictions in which Grantor is the Declarant and which affect the Premises or the Project, provided, however that Beneficiary shall have no liability under the rights of Grantor as Declarant unless and until Beneficiary becomes the successor Declarant upon foreclosure or conveyance in lieu of foreclosure on such real property; together with

(p) All “*Equipment*” as that term is defined in the Utah Uniform Commercial Code as presently or hereafter in effect; together with

(q) All “*Goods*” as that term is defined in the Utah Uniform Commercial Code as presently or hereafter in effect; together with

(r) All “*Accounts*” and “*General Intangibles*” as those terms are defined in the Utah Uniform Commercial Code as presently or hereafter in effect; together with

(s) All of Borrower’s right, title, and interest in and to (i) all agreements (except for Leases), commitments, and options now or hereafter existing with respect to the construction, ownership, maintenance, operation, management, or use of the Premises or Improvements, including the Property Management Agreement between Evergreene Management Group, LLC, a Utah limited liability company, and Borrower dated January 1, 2024; (ii) all plans, specifications, drawings, and reports now existing or hereafter prepared with respect to the Premises or Improvements, including architectural and engineering plans, specifications and drawings, soils reports, environmental reports, and all other property reports; (iii) the Project Licenses (hereinafter defined); (iv) any and all present and future amendments, modifications, supplements, and addenda to any of the items described in clauses (i) through (iii) of this Section 1.1(s); and (v) any and all guarantees, warranties (including building or manufacturer’s warranties) and other undertakings (including payment and performance bonds) now existing or hereafter entered into or provided with respect to any of the items described in clauses (i) through (iv) of this Section **Error! Reference source not found.** (collectively, the “*Contracts*”);

(t) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan Agreement referred to in Subsection 1.2(a)(iii) below.

## 1.2 Secured Obligations.

(a) Grantor makes the grant, conveyance, assignment and transfer set forth in Section 1.1 above, and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the “*Secured Obligations*”) in any order of priority that Beneficiary may choose:

(i) Payment of all obligations at any time owing under a *Promissory Note* (as amended, restated, extended, or otherwise modified, from time to time, the “*Note*”) dated March 13, 2024, payable by Grantor in the stated principal amount of Sixteen Million Forty-One Thousand Two Hundred Seventy-Three and No/100 Dollars (\$16,041,273.00) to the order of the

Beneficiary with a maturity date of March 13, 2026, unless extended to September 13, 2026, pursuant to the terms of the Loan Agreement (defined below); and

(ii) Payment and performance of all obligations of Grantor under this Deed of Trust; and

(iii) Payment and performance of all obligations of Grantor under the *Construction Loan and Permanent Loan Agreement* bearing even date herewith between Grantor as "Borrower" and Beneficiary as "Lender" (as amended from time to time, the "*Loan Agreement*"); and

(iv) Payment of all obligations at any time owing under a *Promissory Note* of even date herewith, payable by Grantor, as maker, in the stated principal amount of Twenty-Three Thousand Five Hundred and No/100 Dollars (\$23,500.00) to the order of Beneficiary (as it may be amended, restated, modified, or extended, the "*Rate Lock Note*"); and

(v) Payment and performance of any obligations of Grantor under any Loan Documents which are executed by Grantor; and

(vi) Payment and performance of all obligations of Borrower arising from any Interest Rate Agreements. "*Interest Rate Agreements*" shall mean an interest rate hedging program through the purchase by Borrower from Beneficiary of an interest rate swap, cap or such other interest rate protection product with respect to the Note; and

(vii) Payment and performance of all future advances and other obligations that Grantor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust (including, but not limited to, any Excess Indebtedness (as defined in the Loan Agreement); and

(viii) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations; and

(ix) Payment of all other sums, with interest thereon, advanced by Beneficiary hereunder or under any other documents executed in connection with the Loan.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations, the terms and conditions of which are incorporated by this reference, and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note, the Rate Lock Note, or the Loan Agreement which permit borrowing, repayment and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

## 2. Assignment of Rents.

2.1 Assignment. As an absolute assignment and not as security for the Secured Obligations, Grantor assigns and transfers to Beneficiary all right, title and interest of Grantor in and to: (a) any and all present and future leases, subleases, and other agreements for the occupancy or use of all or any part of the Property and all extensions, renewals and replacements thereof ("Leases"); (b) all cash or security deposits, advance rentals, and deposits of a similar nature under the Leases; (c) any and all guarantees of tenants' or occupants' performances under any and all Leases; and (d) all rents, issues, profits, and revenues ("Rents") now due or which may become due or to which Grantor may now or shall hereafter become entitled or may demand or claim (including Rents coming due during any redemption period), arising or issuing from or out of any and all Leases, including without limitation minimum, additional, percentage and deficiency rents and liquidated damages.

2.2 Grant of License. Beneficiary hereby confers upon Grantor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Section 6.2 below, shall exist and be continuing. If an Event of Default has occurred and is continuing, Beneficiary shall have the right, which it may choose to exercise in its sole discretion, to terminate this License without notice to or demand upon Grantor, and without regard to the adequacy of Beneficiary's security under this Deed of Trust.

2.3 Collection and Application of Rents. Subject to the License granted to Grantor under Section 2.2 above, Beneficiary has the right, power and authority to collect any and all Rents. Grantor hereby appoints Beneficiary its attorney-in-fact to perform any and all of the following acts, if and at the times when Beneficiary in its sole discretion may so choose:

- (a) Demand, receive and enforce payment of any and all Rents; or
- (b) Give receipts, releases and satisfactions for any and all Rents; or
- (c) Sue either in the name of Grantor or in the name of Beneficiary for any and all Rents.

Beneficiary and Grantor agree that the mere recordation of the assignment granted herein entitles Beneficiary immediately to collect and receive rents upon the occurrence of an Event of Default, as defined in Section 6.2, without first taking any acts of enforcement under applicable law, such as, but not limited to, providing notice to Grantor, filing foreclosure proceedings, or seeking and/or obtaining the appointment of a receiver. Further, Beneficiary's right to the Rents does not depend on whether or not Beneficiary takes possession of the Property as permitted under Subsection 6.3(c). In Beneficiary's sole discretion, Beneficiary may choose to collect Rents either with or without taking possession of the Property. Beneficiary shall apply all Rents collected by it in the manner provided under Section 6.6. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity.

2.4 Beneficiary Not Responsible. Under no circumstances shall Beneficiary or Trustee have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by

agent, takes actual possession of the Premises and Improvements, unless Beneficiary or Trustee (respectively) agree in writing to the contrary, neither Beneficiary nor Trustee is or will be deemed to be:

- (a) A "mortgagee in possession" for any purpose; or
- (b) Responsible for performing any of the obligations of the lessor under any lease; or
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.5 **Leasing.** Grantor shall not accept any deposit or prepayment of rents under the leases for any rental period exceeding one (1) month without Beneficiary's prior written consent. Grantor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement.

2.6 **Utah Assignment of Rents Act.** Pursuant to Utah Code Section 57-26-104 (Chapter 26 of the Title 57 of the Utah Code Annotated being entitled "Utah Uniform Assignment of Rents Act" (including any amendments thereto), this Deed of Trust creates an assignment of rents arising from the Property in favor of Lender to secure the observance, performance and discharge of the Secured Obligations. Beneficiary shall have the right to enforce the said assignment of rents as provided in Sections 106, 107, 108 and 109 of the Utah Assignment of Rents Act.

2.7 **Assignment of Contracts.** To the fullest extent not prohibited by applicable Laws, Grantor hereby grants, assigns, and pledges to Lender all of Grantor's right, title and interest in and to all of the Contracts as security for the Secured Obligations.

### 3. **Grant of Security Interest.**

3.1 **Security Agreement.** The parties intend for this Deed of Trust to create a lien on the Property, and an assignment of the Rents, all in favor of Beneficiary. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Grantor as debtor hereby grants Beneficiary as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code of the State in which the Property is located, covering all such Property and Rents. For purposes of the Utah Code Ann. Section 70A-9a-502, Grantor is the record owner of the Premises.

3.2 **Financing Statements.** Grantor hereby authorizes Beneficiary to file one or more financing statements. In addition, Grantor shall execute such other documents as Beneficiary may from time to time require to perfect or continue the perfection of Beneficiary's security interest in any Property or Rents. As provided in Section 5.9 below, Grantor shall pay all fees and costs that Beneficiary may incur in filing financing statements and such other documents as Beneficiary may from time to time require to

perfect or continue the perfection of Beneficiary's security interest in any Property or Rents and in obtaining such record searches as Beneficiary may reasonably require. A photographic copy or other reproduction of this Deed of Trust or any financing statement is sufficient as a financing statement and may be filed as such. In case Grantor fails to execute any document for the perfection or continuation of any security interest, Grantor hereby appoints Beneficiary as its true and lawful attorney-in-fact to execute any such documents on its behalf. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it, or limiting the parties' stated intention that everything used in connection with the production of income from the Property, or adapted for use therein, or which is described or reflected in this Deed of Trust, is and at all times shall be regarded as part of the Premises.

4. **Fixture Filing.**

This Deed of Trust constitutes a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code in the State in which the Property is located, as amended or recodified from time to time, covering any Property which now is or later may become fixtures attached to the Premises or Improvements. For this purpose, the respective addresses of Grantor, as debtor, and Beneficiary and Trustee, as secured parties, are as set forth in the preambles of this Deed of Trust.

5. **Rights and Duties of the Parties.**

5.1 **Representations and Warranties.** Grantor represents and warrants that:

(a) Grantor lawfully possesses and holds fee simple title to all of the Premises and Improvements;

(b) Grantor has or will have good title to all Property other than the Premises and Improvements;

(c) Grantor has the full and unlimited power, right and authority to encumber the Property and assign the Rents;

(d) This Deed of Trust creates a first and prior lien on the Property;

(e) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Premises and Improvements;

(f) Grantor owns any Property which is personal property free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office; and

(g) Grantor's place of business, or its chief executive office if it has more than one place of business, is located at as set forth in the preambles of this Deed of Trust.



5.2 **Taxes, and Assessments.** Grantor shall pay prior to delinquency all taxes, levies, charges and assessments in accordance with Section 15.1 of the Loan Agreement.

5.3 **Performance of Secured Obligations.** Grantor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 **Liens, Charges and Encumbrances.** Grantor shall immediately discharge any lien on the Property which Beneficiary has not consented to in writing or which is not otherwise permitted in accordance with the terms of the Loan Agreement.

5.5 **Damages and Insurance and Condemnation Proceeds.** In the event of any casualty or condemnation of the Property, the provisions of Article 16 of the Loan Agreement shall govern.

5.6 **Maintenance and Preservation of Property.**

(a) Grantor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Grantor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change or variance in any zoning or other Premises use classification which affects the Property or any part of it, except as permitted or required by the Loan Agreement or with Beneficiary's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Grantor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices, regardless of whether or not Beneficiary agrees to disburse Proceeds or other sums to pay costs of the work of repair or reconstruction under Article 16 of the Construction Loan and Permanent Loan Agreement.

(d) Grantor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Grantor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Grantor on the Property or any part of it under the Loan Agreement.

(e) Grantor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Agreement as waste which arises out of Hazardous Material.

(f) Grantor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value.

5.7 **Releases, Extensions, Modifications and Additional Security.** From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

- (a) Release any person liable for payment of any Secured Obligation;
- (b) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation;
- (c) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security;
- (d) Alter, substitute or release any property securing the Secured Obligations;
- (e) Consent to the making of any plat or map of the Property or any part of it;
- (f) Join in granting any easement or creating any restriction affecting the Property; or
- (g) Join in any subordination or other agreement affecting this Deed of Trust or the lien of it; or
- (h) Release the Property or any part of it.

5.8 **Release.** When all of the Secured Obligations have been paid in full and all fees and other sums owed by Grantor under Section 5.9 of this Deed of Trust and the other Loan Documents have been received, Beneficiary and Trustee shall release this Deed of Trust, the lien created thereby, and all notes and instruments evidencing the Secured Obligations. Grantor shall pay any costs of preparation and recordation of such release.

5.9 **Compensation, Exculpation, Indemnification.**

(a) Grantor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary when the law provides no maximum limit, for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including providing a statement of the Secured Obligations or providing the release pursuant to Section 5.8 above. Grantor shall also pay or reimburse all of Beneficiary's and Trustee's reasonable costs and expenses which may be incurred in rendering any such services. Grantor further agrees to pay or reimburse Beneficiary for all reasonable costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including any rights or remedies afforded to Beneficiary and Trustee under Section 6.3, whether any lawsuit is filed or not, or in defending any action, or proceeding arising under or relating to this Deed of Trust, including attorneys' fees and other legal costs, costs of any Foreclosure Sale (as defined in Subsection 6.3(i) below), including without limitation costs and expenses in any bankruptcy, reorganization, liquidation, receivership or similar proceedings, and any cost of evidence of title. If Beneficiary and/or Trustee, as required by applicable law, chooses to dispose of Property through more than one Foreclosure Sale, Grantor shall pay all costs, expenses or other advances that may be incurred or made by Beneficiary and/or Trustee in each of such Foreclosure Sales. In any suit to foreclose the lien hereof or enforce any other remedy of Trustee or Beneficiary under this Deed of Trust or the Note or the Rate Lock Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may

be paid or incurred by or on behalf of Trustee and Beneficiary for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Trustee and Beneficiary with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Trustee and Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Property. All expenditures and expenses of the nature in this Subsection mentioned, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Deed of Trust, including the fees of any attorney (including the costs and fees of paralegals) employed by Trustee or Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note, the Rate Lock Note, or the Property, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Grantor, with interest thereon at the Default Rate and shall be secured by this Deed of Trust.

(b) Neither Beneficiary nor Trustee shall be directly or indirectly liable to Grantor or any other person as a consequence of any of the following:

(i) Beneficiary's or Trustee's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary and/or Trustee in this Deed of Trust;

(ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Grantor under any agreement related to the Property or under this Deed of Trust; or

(iii) Any loss sustained by Grantor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct and bad faith of Beneficiary.

Grantor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary or Trustee.

(c) Grantor agrees to indemnify Beneficiary and Trustee against and hold them harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' reasonable fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which they may suffer or incur:

(i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;

(ii) Because of any failure of Grantor to perform any of its obligations; or

(iii) Because of any alleged obligation of or undertaking by Beneficiary and/or Trustee to perform or discharge any of the representations, warranties, conditions, covenants or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Grantor to indemnify Beneficiary and Trustee shall survive the release and cancellation of any or all of the Secured Obligations and the full or partial release of this Deed of Trust.

(d) Grantor shall pay all obligations to pay money arising under this Section 5.9 immediately upon demand by Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate.

5.10 **Defense and Notice of Claims and Actions.** At Grantor's sole expense, Grantor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary created under it, against all adverse claims. Grantor shall give Beneficiary prompt notice in writing if any claim is asserted which does or could affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.11 **Subrogation.** Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

5.12 **Site Visits, Observation and Testing.** Beneficiary and its agents and representatives shall have the right at any reasonable time to enter and visit the Property for the purpose of performing appraisals, observing the Property, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. Beneficiary has no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation or testing by Beneficiary, its agents or representatives shall impose any liability on any of Beneficiary, its agents or representatives. In no event shall any site visit, observation or testing by Beneficiary, its agents or representatives be a representation that Hazardous Material are or are not present in, on or under the Property, or that there has been or shall be compliance with any law, regulation or ordinance pertaining to Hazardous Material or any other applicable governmental law. Neither Grantor nor any other party is entitled to rely on any site visit, observation or testing by any of Beneficiary, its agents or representatives. Neither Beneficiary, its agents or representatives owe any duty of care to protect Grantor or any other party against, or to inform Grantor or any other party of, any Hazardous Material or any other adverse condition affecting the Property. Beneficiary shall give Grantor reasonable notice before entering the Property. Beneficiary shall make reasonable efforts to avoid interfering with Grantor's use of the Property in exercising any rights provided in this Section 5.12.

5.13 **Notice of Change.** Grantor shall give Beneficiary prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Property, including the Books and Records; and (c) Grantor's name or business structure. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than the Books and Records) will be located on the Premises and all

Books and Records will be located at Grantor's place of business or chief executive office if Grantor has more than one place of business.

6. **Accelerating Transfers, Default and Remedies.**

6.1 **Accelerating Transfers.**

(a) "*Accelerating Transfer*" means any Transfer not expressly permitted under Article 17 of the Loan Agreement.

(b) Grantor acknowledges that Beneficiary is making one or more advances under the Loan Agreement in reliance on the expertise, skill and experience of Grantor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Grantor agrees that Grantor shall not make any Accelerating Transfer, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole discretion. If any Accelerating Transfer occurs, Beneficiary in its sole discretion may declare all of the Secured Obligations to be immediately due and payable, and Beneficiary may invoke any rights and remedies provided by Section 6.3 of this Deed of Trust.

6.2 **Events of Default.** Grantor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "*Events of Default*"; any one singly, an "*Event of Default*").

(a) Failure of Borrower (i) (x) to pay any of the principal of the Loan when due, (y) to pay interest within five (5) days after the date when due or (z) to observe or perform any of the other covenants or conditions by Borrower to be performed under the terms of this Deed of Trust or any of the other Loan Documents concerning the payment of money for a period of five (5) days after written notice from Beneficiary that the same is due and payable; or (ii) for a period of thirty (30) days after written notice from Beneficiary, to observe or perform any non-monetary covenant or condition contained in this Deed of Trust or any of the other Loan Documents; provided that if any such failure concerning a non-monetary covenant or condition is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Borrower shall have an additional sixty (60) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as (x) Borrower commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of Beneficiary's notice, and (y) the existence of such uncured default will not result in any tenant under a Lease having the right to terminate such Lease due to such uncured default; and provided further that if a different notice or grace period is specified under Article 19 of the Loan Agreement (or elsewhere in this Deed of Trust or the Loan Agreement) in which such particular breach will become an Event of Default, the specific provision shall control; or

(b) An "Event of Default" occurs under this Deed of Trust, the Note, the Rate Lock Note, the Loan Agreement or any other Loan Document.

(c) Any default by Borrower or any Guarantor under the Environmental Indemnity which is not cured within any applicable cure period thereunder.

(d) Any default by Borrower under any Permitted Exception which is not cured within any applicable cure period thereunder.

6.3 **Remedies.** At any time after an Event of Default, Beneficiary may, at its option and without notice to or demand upon Grantor exercise any one or more of the following actions, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) **Acceleration.** Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) **Receiver.** Pursuant to Utah Code Section 78B-21-106(2)(b) and the rest of the Uniform Commercial Real Estate Receivership Act, Beneficiary shall, as a matter of right, without notice and without giving bond to Grantor or anyone claiming by, under or through Grantor, and without regard for the solvency or insolvency of Grantor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, and the proceeds, issues and profits thereof, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Grantor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Property, and such rights and powers as Beneficiary would have, upon entering and taking possession of the Property under Subsection 6.3(c) below.

(c) **Entry.** Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Grantor's or the then owner's Books and Records; entering into, enforcing, modifying or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Beneficiary; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Grantor shall assemble all of the Property that has been removed from the Premises and make all of it available to Beneficiary at the site of the Premises. Grantor hereby irrevocably constitutes and appoints Beneficiary as Grantor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Grantor's name on any instruments.

(d) **Cure; Protection of Security.** Beneficiary may cure any breach or default of Grantor, and if it chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust, including, without limitation, completing construction of the improvements at the Property contemplated by the Loan Agreement. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting or

compromising any encumbrance, charge, lien or claim of lien which in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or to be conclusive as among the parties to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Agreement; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Subsection 6.3(d) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Subsection 6.3(d) shall be secured by this Deed of Trust.

(e) Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the State in which the Property is located.

(f) Foreclosure; Lawsuits. Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law, including, without limitation, Utah Code Ann. 57-1-23, *et seq.* Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder, and the amount of Beneficiary's successful bid shall be credited on the Secured Obligations. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction. In addition to the right provided in Section 6.3(b), upon, or at any time after the filing of a complaint to foreclose this Deed of Trust, Trustee and Beneficiary shall be entitled to the appointment of a receiver of the Property by the court in which such complaint is filed, and Grantor hereby consents to such appointment pursuant to Pursuant to Utah Code Section 78B-21-106(2)(b) and the rest of the Uniform Commercial Real Estate Receivership Act.

(g) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other instrument, document, agreement or other writing heretofore, concurrently or in the future executed by Grantor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Grantor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof.

(h) Sale of Personal Property. Beneficiary and/or Trustee, as required by applicable law, shall have the discretionary right to cause some or all of the Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law, including, without limitation Utah Code Ann. (1953) Sec. 57-1-19 *et seq* and any successor statutes.

(i) For purposes of this power of sale, Beneficiary and/or Trustee, as required by applicable law, may elect to treat as personal property any Property which is intangible or which can be severed from the Premises or Improvements without causing structural damage. If it chooses to do so, Beneficiary and/or Trustee, as required by applicable law, may

dispose of any personal property, in any manner permitted by Article 9 of the Uniform Commercial Code of the State in which the Property is located, including any public or private sale, or in any manner permitted by any other applicable law.

(ii) In connection with any sale or other disposition of such Property, Grantor agrees that the following procedures constitute a commercially reasonable sale: Beneficiary shall mail written notice of the sale to Grantor at least ten (10) days prior to such sale. Beneficiary will publish notice of the sale in a local daily newspaper of general circulation. Upon receipt of any written request, Beneficiary will make the Property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equals the fair value of the Property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(i) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel or item of property, Beneficiary and/or Trustee, to the extent permitted by applicable law, may:

(i) Designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) Elect to dispose of the lots, parcels and/or items through a single consolidated sale or disposition to be held or made under or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "*Foreclosure Sale*"; and any two or more, "*Foreclosure Sales*").

If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

6.4 Credit Bids. At any Foreclosure Sale, any person, including Grantor or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

(a) First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to pay or reimburse Beneficiary and Trustee under Section 5.9 of this Deed of Trust; and

(b) Second, all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.



**6.5 Application of Foreclosure Sale Proceeds.** Beneficiary shall apply the proceeds of any Foreclosure Sale in the following manner: Except as may otherwise be required by the law, the proceeds of any Foreclosure Sale under this Deed of Trust shall be applied in the following priority:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Grantor is obligated to reimburse Beneficiary or Trustee under Section 5.9 of this Deed of Trust;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust which then remain unpaid;

(c) Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons legally entitled to it, or, in the Trustee's discretion, to the county clerk of the county in which the sale took place.

**6.6 Application of Rents and Other Sums.** Beneficiary shall apply any and all Rents collected by it, and any and all sums other than proceeds of a Foreclosure Sale which Beneficiary may receive or collect under Section 6.3 above, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation and collection that may be incurred by Beneficiary or any receiver;

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

## **7. The Trustee.**

**7.1 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his or her agents or attorneys, (iii) to select and employ, in and about the execution of his or her duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (iv) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee

shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Premises for debts contracted for or liability or damages incurred in the management or operation of the Premises. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save and hold Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

7.2 **Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from any other moneys of Trustee.

7.3 **Successor Trustees.** Trustee may resign by the giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary, in Beneficiary's sole discretion and with or without cause, shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed on its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his or her successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law. Any prior election to act jointly or severally shall not prevent either or both of such multiple substitute Trustees from subsequently executing, jointly or severally, any or all of the provisions hereof.

7.4 **Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by Trustee or substitute trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

7.5 **Succession Instruments.** Any substitute trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its, his or her predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such

substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute trustee so appointed in such Trustee's place.

7.6 **No Representation by Trustee or Beneficiary.** By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

## 8. **Miscellaneous Provisions.**

8.1 **Additional Provisions.** The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Grantor which apply to this Deed of Trust and to the Property.

### 8.2 **No Waiver or Cure.**

(a) Each waiver by Beneficiary must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary to take action on account of any default of Grantor. Consent by Beneficiary to any act or omission by Grantor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's consent to be obtained in any future or other instance.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Trustee or Beneficiary, its agent or a receiver takes possession of all or any part of the Property in the manner provided in Subsection 6.3(c).

(ii) Beneficiary collects and applies Rents as permitted under Sections 2.3 and 6.6 above, either with or without taking possession of all or any part of the Property.

(iii) Beneficiary or Trustee receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, or other claims, property or rights assigned to Beneficiary under Section 5.5 above.

(iv) Beneficiary makes a site visit, observes the Property and/or conducts tests as permitted under Section 5.12 above.

(v) Beneficiary or Trustee receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations.

(vi) Beneficiary, Trustee or any receiver invokes any right or remedy provided under this Deed of Trust.

### 8.3 Powers of Beneficiary.

(a) If Beneficiary performs any act which it is empowered or authorized to perform under this Deed of Trust, including any act permitted by Section 5.7 or Subsection 6.3(d) of this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding, or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Grantor shall not be released or changed if Beneficiary grants any successor in interest to Grantor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Grantor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(b) Beneficiary may take any of the actions permitted under Subsections 6.3(b) and/or 6.3(c) regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(c) From time to time, Beneficiary may apply to any court of competent jurisdiction for aid and direction in executing and enforcing the rights and remedies created under this Deed of Trust. Beneficiary may from time to time obtain orders or decrees directing, confirming or approving acts in executing and enforcing these rights and remedies.

(d) At Beneficiary's option, any written notice of default given to Grantor may be given in the form of a statutory notice of default under the laws of the State of Utah relating to the non-judicial foreclosures of deeds of trust, or any other form as Beneficiary may elect.

8.4 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

8.5 Joint and Several Liability. If Grantor consists of more than one person, each shall be jointly and severally liable for the faithful performance of all of Grantor's obligations under this Deed of Trust.

8.6 **Applicable Law.** The creation, perfection and enforcement of the lien of this Deed of Trust shall be governed by the law of the State in which the property is located. Subject to the foregoing, in all other respects, this Deed of Trust shall be governed by the substantive laws of the State of Utah.

8.7 **Successors in Interest.** The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties. However, this Section 8.7 does not waive the provisions of Section 6.1 above.

8.8 **Interpretation.**

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations. It further includes all principal, interest, prepayment charges, late charges, loan fees and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Deed of Trust. The Exhibits to this Deed of Trust are hereby incorporated in this Deed of Trust.

8.9 **In-House Counsel Fees.** Whenever Grantor is obligated to pay or reimburse Beneficiary for any attorneys' fees, those fees shall include the documented and allocated reasonable costs for services of in-house counsel.

8.10 **Waiver of Statutory Rights.** To the extent permitted by law, Grantor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Grantor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Grantor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Deed of Trust on behalf of Grantor and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Deed of Trust. The foregoing waiver of right of redemption is made pursuant to the provisions of applicable law.

8.11 **Severability.** If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

8.12 **Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Grantor: Victory Heights LLC  
386 W 500 S, Suite 100  
Salt Lake City, Utah 84101  
Attention: Jonathan Hardy  
Email: jhardy@bcgholdingsllc.com

With a copy to: Kirton McConkie  
50 East South Temple, Suite 400  
Salt Lake City, Utah 84111  
Attention: David Wilson  
Facsimile: (801) 321-4893  
Email: dwilson@kmclaw.com

Beneficiary: KeyBank National Association  
4910 Tiedeman Road, 5<sup>th</sup> Floor  
Mail Code OH-01-51-0570  
Brooklyn, Ohio 44144  
Attention: Community Development Lending  
Telephone: (216) 689-5579

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

Any notice or demand delivered to the person or entity named above to accept notices and demands for Grantor shall constitute notice or demand duly delivered to Grantor, even if delivery is refused.

8.13 **Beneficiary's Lien for Service Charge and Expenses.** At all times, regardless of whether any Loan proceeds have been disbursed, this Deed of Trust secures (in addition to any Loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Beneficiary not to exceed the maximum amount secured hereby.

8.14 **Interest Rate Agreements.** For purposes hereof, all obligations of Grantor to Beneficiary under all Interest Rate Agreements and any indebtedness or obligation contained therein or evidenced thereby shall be considered an obligation of Grantor secured hereby.

8.15 **Waiver of Trial by Jury.** GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS DEED OF TRUST, THE NOTE, THE RATE LOCK NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF GRANTOR OR BENEFICIARY. GRANTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. GRANTOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR BENEFICIARY TO MAKE THE LOAN, ENTER INTO THIS DEED OF TRUST AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

8.16 **Inconsistencies.** In the event of any inconsistency between this Deed of Trust and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

8.17 **Reserves.**

(a) If required by Beneficiary, Grantor shall, at the time of making each monthly payment under the Note or the Rate Lock Note, deposit with Beneficiary a sum, as estimated by Beneficiary, equal to (i) the taxes and special assessments next due on the Property, and (ii) the premiums that will next become due on insurance policies as may be required under this Deed of Trust, less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such taxes, special assessments and premiums will become delinquent. Beneficiary may require Grantor to deposit with Beneficiary, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Grantor or the Property as Beneficiary reasonably deems necessary to protect Beneficiary's interests ("*Other Impositions*"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Beneficiary's option. If required by Beneficiary, Grantor shall promptly deliver to Beneficiary all bills and notices with respect to any taxes, assessments, premiums and Other Impositions. Unless Grantor and Beneficiary otherwise agree in writing, Beneficiary shall not be required to pay Grantor any interest, earnings or profits on any sums deposited with Beneficiary. All sums deposited with Beneficiary under this Section 8.17 are hereby pledged as security for the Secured Obligations.

(b) All such deposited sums shall be held by Beneficiary and applied in such order as Beneficiary elects to pay such taxes, assessments, premiums and Other Impositions or, upon any Event of Default, may be applied in whole or in part, to the Secured Obligations. The arrangement provided for in this Section 8.17 is solely for the added protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Deed of Trust by Beneficiary, any funds on hand shall be turned over to the assignee and any responsibility of Beneficiary with respect thereto shall terminate. Each Transfer of the Property shall automatically transfer to the transferee all rights of Grantor with respect to any funds

deposited hereunder. Upon payment in full of the Secured Obligations, Beneficiary shall promptly refund to Grantor the remaining balance of any deposits then held by Beneficiary.

(c) If the total deposits held by Beneficiary exceed the amount deemed necessary by Beneficiary to provide for the payment of such taxes, assessments, premiums and Other Impositions, such excess shall, provided there is no Event of Default or any event which would constitute an Event of Default if not cured within the time allowed, be credited by Beneficiary on the next due installment or installments of such deposits. If at any time the total deposits held by Beneficiary are less than the amount deemed necessary by Beneficiary to provide for the payment of such taxes, assessments, premiums and Other Impositions, Grantor shall promptly deposit the deficiency with Beneficiary after receipt of written demand from Beneficiary.

(d) Notwithstanding the foregoing, Beneficiary shall not require the payment of reserves as provided in this Section until a delinquency occurs in the payment of such taxes, assessments, premiums or Other Impositions, or until the occurrence of an Event of Default.

8.18 **Intentionally Omitted.**

8.19 **UCC Statements.** Grantor hereby authorizes Beneficiary to file UCC financing statements to perfect Beneficiary's security interest in any part of the Property. In addition, Grantor agrees to sign any and all other documents that Beneficiary deems necessary in its sole discretion to perfect, protect, and continue Beneficiary's lien and security interest in the Property.

8.20 **Business Purpose.** The proceeds of the Loan evidenced by the Note shall be used exclusively for business or investment purposes.

8.21 **Entire Agreement.** This Deed of Trust, together with the other Loan Documents constitutes the entire understanding and agreement of Grantor and Beneficiary with respect to the Loan. The Loan Documents supersede all prior negotiations, discussions, and agreements with respect to the Loan, may not be contradicted by evidence of any alleged oral agreement, and may not be amended, modified, rescinded or terminated in any manner except by a written agreement signed by Grantor and Beneficiary.

8.22 **Utah Statutory Notice.** PURSUANT TO UTAH CODE SECTION 25-5-4, GRANTOR AND ANY BORROWER OR GUARANTOR ARE HEREBY NOTIFIED THAT THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BY THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES HERETO. This Deed of Trust and the other Loan Documents embody the entire agreement between the parties and supersede all prior proposals, agreements and understandings relating to the subject matter hereof.



## 9. SECURITY ASSIGNMENT OF CONTRACTS.

9.1 **Assignment.** To the fullest extent not prohibited by applicable Laws, Borrower hereby grants, assigns, and pledges to Beneficiary all of Borrower's right, title and interest in and to all of the Contracts as security for the Secured Obligations.

9.2 **Borrower's Covenants.** Borrower hereby covenants and represents to Beneficiary as follows:

(a) Borrower shall punctually observe, perform, and discharge each and every obligation, covenant, condition, and agreement of the Contracts to be performed by Borrower.

(b) Borrower shall enforce performance by the other part(y)(ies) to any Contract, of each and every obligation, covenant, condition and agreement to be performed by such other part(y)(ies).

(c) Borrower shall not assign, sell, pledge, transfer, mortgage, hypothecate or otherwise encumber its interests in any Contract. In addition, Borrower shall not consent to, suffer or permit any future assignment or transfer of any material Contract by any party without Beneficiary's prior written consent in each instance.

(d) Borrower shall not materially alter, amend, modify or terminate any of the Contracts without the prior written consent of Beneficiary, except for service contracts entered into in the ordinary course of business.

(e) Upon Beneficiary's request following an Event of Default, Borrower shall deliver to Lender all of the original Contracts and all modifications, extensions, renewals, amendments, and other agreements relating thereto.

(f) Borrower shall execute and deliver, at its sole cost and expense, upon Beneficiary's written request, any documents necessary to cause the specific assignment of any particular Contract or any other document or instrument, the assignment of which is necessary, proper or desirable in Beneficiary's judgment to carry out the purposes of the assignment of Contracts provided for herein, including any consents to such assignment of Contracts.

9.3 **Beneficiary's Remedies upon Default.** Upon the occurrence of an Event of Default, Beneficiary, at its sole option, and without any notice whatsoever to Borrower, and without assuming any of the obligations of Borrower under the Contracts, shall have the right (but not the obligation) and is hereby authorized to: (a) cure any default of Borrower in such manner and to such extent as Beneficiary may deem necessary to protect the security hereof, (b) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary; (c) demand, receive, and enforce payment of all amounts that may be or become payable to Borrower under any of the Contracts; (d) exercise and enforce by suit or otherwise any remedies against other parties to the Contracts for breaches of the terms and conditions of the Contracts; (e) enter into other contracts or agreements, in the name of either Borrower or Beneficiary, with such third parties as Beneficiary may in its discretion select, and upon such terms and conditions as Lender in its reasonable discretion may determine; (f) compromise

amounts due under the Contracts; (g) maintain or dismiss suits with respect to the Contracts; (h) delegate any and all rights and powers given to Beneficiary by the assignment of Contracts provided for herein; (i) perform any obligation, covenant or agreement of Grantor under any of the Contracts, and, in exercising any such powers, paying all necessary costs and expenses, employing counsel and incurring and paying attorneys' fees; (j) appear in any bankruptcy, insolvency or reorganization proceeding involving any party to the Contracts and collect any award or payment due Grantor pursuant to any such proceeding; and/or (k) use such measures, legal or equitable as in its discretion may carry out and effectuate the terms and intent of the assignment of Contracts provided for herein. All such actions shall be taken at the expense of Borrower.

9.4 **No Liability of Lender.** Beneficiary shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any of the Contracts, or by reason of the assignment of Contracts provided for herein. Further, nothing in this Deed of Trust shall obligate Beneficiary to assume any obligations under any Contract, unless and until Beneficiary becomes the owner of the Property and affirmatively assumes a particular Contract in writing.

9.5 **Instructions to Contracting Parties.** Upon an Event of Default, the assignment of Contracts provided for herein constitutes an irrevocable direction to and full authority from Borrower to any other party to any Contract to pay directly to Beneficiary, upon Beneficiary's request, all amounts that may be or become due to Borrower. No proof of the occurrence of an Event of Default shall be required. Any such contracting party is hereby authorized by Borrower to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any amounts that may be or become due under its Contract, or for the performance of any obligations under such Contract.

9.6 **Application of Income.** Notwithstanding any other provision of this Deed of Trust, the payments, proceeds and income collected by Beneficiary with respect to the Contracts may be applied, in whatever order Beneficiary in its discretion may determine, to the payment of any costs and expenses, to the payment of taxes, special assessments and insurance premiums that become due and delinquent on the Property, to the Secured Obligations, or to any liens or encumbrances on the Property or any personal property of Grantor.

9.7 **Interpretation.** The terms of any separate assignment of Contracts or assignment of construction documents shall supersede and control over any inconsistent terms of the assignment of Contracts provided for herein.

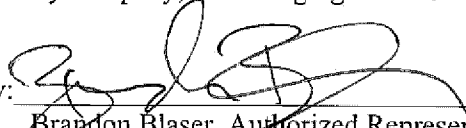
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SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first above written.

**"Grantor"**

**VICTORY HEIGHTS LLC**, a Utah limited liability company

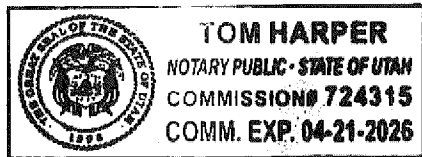
By: Victory Heights Phase 1 GP LLC, a Utah limited liability company, its Managing Member

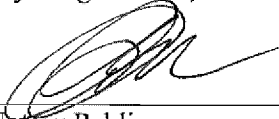
By:   
Brandon Blaser, Authorized Representative

Organizational Identification Number: 12872625-0160

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 12 day of March, 2024, by Brandon Blaser, the Authorized Representative of Victory Heights Phase 1 GP LLC, a Utah limited liability company, the Managing Member of Victory Heights LLC, a Utah limited liability company.



  
Notary Public  
Residing at: Brantford, Utah

**EXHIBIT A  
TO  
DEED OF TRUST**

**PARCEL 1:**

Beginning at the Northeast corner of Lot 8, Block 29, Plat "F", Salt Lake City Survey and running thence West 246.25 feet; thence South 132.00 feet; thence East 246.25 feet; thence North 132.00 feet to the point of beginning.

**ALSO:**

Beginning 142.0 feet South of the Northeast corner of Lot 8, Block 29, Plat "F", Salt Lake City Survey and running thence South 33.0 feet; thence West 142.5 feet; thence North 33.0 feet; thence East 142.5 feet to the point of beginning.

**PARCEL 1A:**

The non-exclusive easements, appurtenant to Parcel 1 described herein, for pedestrian and vehicular access, as created and described in that certain Warranty Deed recorded November 12, 1919 as Entry No. 422717 in Book 10K at Page 300, described as follows:

Beginning 132.0 feet South of the Northeast corner of said Lot 8 and running thence South 10 feet; thence West 142.5 feet; thence South 188.00 feet; thence West 12.0 feet; thence North 178 feet; thence Northwesterly 14.0 feet, more or less; thence West 135.0 feet; thence North 10.0 feet; thence East 18 rods to the point of beginning.

## DEED OF TRUST LOAN RIDER

This *Deed of Trust Loan Rider* (this “Rider”) is made effective as of the 13<sup>th</sup> day of March, 2024 (the “Effective Date”), and is attached to and made a part of the *Note*, the *Security Instrument*, and the *Construction Loan and Permanent Loan Agreement* dated the Effective Date (the “CLPLA”), between Victory Heights LLC, a Utah limited liability company (“Borrower”) and KeyBank National Association, a national banking association (“Lender”) and the other document(s) evidencing, securing, and governing a loan in the amount of Sixteen Million Forty-One Thousand Two Hundred Seventy-Three and No/100 Dollars (\$16,041,273.00) (the “Loan”) made by the Lender to Borrower for the construction of eighty-eight (88) units for use as low-income housing in Salt Lake City, Salt Lake County, Utah (the “Project”).

The form of this Rider has been designed for use whether Borrower is a limited partnership, limited liability company, a land trust of which a limited liability company is the beneficiary, or otherwise. Accordingly, the limited liability company developing the Project, whether or not identified as Borrower, is sometimes referred to herein as the “Company”. The *Amended and Restated Operating Agreement* dated on or about the date hereof forming or continuing the Company is referred to herein as the “Operating Agreement”. Capitalized terms not defined herein shall have the meanings set forth in the CLPLA.

The Borrower, by its execution hereof, and the Lender, by its acceptance of the Security Instrument, each hereby agrees that the following covenants, terms, and conditions shall be part of and shall modify or supplement each of the documents evidencing, securing, or governing the disbursement of the Loan (the “Loan Documents”), and that in the event of any inconsistency or conflict between the covenants, terms, and conditions of the Loan Documents and this Rider, the following covenants, terms, and conditions shall control and prevail:

1. Nonrecourse Obligation.

(a) Section 1 of this Rider shall become effective only upon the Conversion Date (as defined in the CLPLA), whereupon the Loan converts from the Construction Term (as defined in the CLPLA) to a Permanent Term (as defined in the CLPLA).

(b) Beginning on the Conversion Date, Lender shall have no recourse to any property of the Borrower or its members other than the Project (including, but not limited to, all accounts) through any claim brought by Lender in connection with the indebtedness represented by the Loan Documents; provided, however, that Borrower shall be personally liable for, and shall hold Lender harmless from and against Lender’s costs, expenses (including reasonable attorneys’ fees), losses and actual damage caused by, or incurred in connection with (i) fraud or conversion; (ii) any false or misleading material misrepresentation contained in the Loan Documents; (iii) misapplication of tenant security deposits, insurance proceeds or condemnation proceeds; (iv) Borrower’s failure to perform under the environmental covenants or indemnifications set forth in the Loan Documents; (v) losses incurred by Lender as a result of the failure to insure the Project as required by the terms of the Loan Documents; (vi) removal from the real property of fixtures

or personal property securing the loan, unless replaced by items of equal value; (vii) while in monetary default, Borrower's failure to pay Lender all rents, income and profits, net of reasonable and customary operating expenses; and (viii) willful or grossly negligent violation of applicable law.

(c) In addition, the Borrower shall have personal liability for the entire indebtedness if the Borrower (i) voluntarily transfers or encumbers the Project in violation of Section 17 of the CLPLA; or (ii) files a voluntary petition for reorganization under the Bankruptcy Code and has not offered, prior to the filing of the application, to enter into the Lender's choice of either an agreement to permit an uncontested foreclosure or an agreement to deliver a deed in lieu of foreclosure, within sixty (60) days of Lender's acceptance of the offer.

2. Subordination. Lender acknowledges that Borrower and State Agency (as defined in the CLPLA) intend to enter into, or concurrently with the execution and delivery of the Loan Documents are entering into, an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42 (h) (6) (B) of the Internal Revenue Code, as amended. Lender agrees to subordinate the Loan and Lender's rights under the documents executed in conjunction therewith to the relevant provisions of said extended use agreement. This subordination is being made in consideration of the allocation of tax credits to the Project, absent which the development of the Project would not occur, and this mortgage Loan would not be made.

3. Notice and Cure Rights. Lender acknowledges that any notice provided to the Borrower under notice provisions of the Loan Documents shall also be provided to the Borrower's Investor Member and shall be delivered by certified mail, return receipt requested, hand delivered, delivered by overnight courier, or delivered by telecopier, at the address or telecopy number set forth below or such other address or telecopy number which either party may give the other notice of in writing in the manner provided in this Section. Such delivery shall be deemed complete upon the second Business Day after mailing, if mailed, on the Business Day after deposit with overnight courier, if sent by overnight courier, and upon delivery, if hand-delivered or delivered by telecopier to:

GSB LIHTC Investor LLC  
Urban Investment Group  
c/o Goldman Sachs Bank USA  
200 West Street, 27<sup>th</sup> Floor  
New York, New York 10282  
Attention: Scott Maxfield  
Facsimile: (917) 343-2048  
Email: [scott.maxfield@gs.com](mailto:scott.maxfield@gs.com)

With copies to:

GSB LIHTC Investor LLC  
Urban Investment Group  
c/o Goldman Sachs Bank USA  
200 West Street, 27<sup>th</sup> Floor  
New York, New York 10282  
Attention: Urban Investment Group Portfolio Manager  
Email: [gs-uig-docs@gs.com](mailto:gs-uig-docs@gs.com);  
[gs-uig-portfolio-manager@gs.com](mailto:gs-uig-portfolio-manager@gs.com)

GSB LIHTC Investor LLC  
Urban Investment Group  
c/o Goldman Sachs Bank USA  
2001 Ross Avenue #2800  
Dallas, Texas 75201  
Attention: Michael Dalton  
Email: [michael.dalton@gs.com](mailto:michael.dalton@gs.com)

Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Attention: Steven C. Koppel, Esq.  
Facsimile: (212) 839-5599  
Email: [skoppel@sidley.com](mailto:skoppel@sidley.com)

Any notice or demand delivered to the person or entity named above to accept notices and demands for Borrower or Investor Member shall constitute notice or demand duly delivered to Borrower or Investor Member, even if delivery is refused.

Furthermore, the Borrower's Investor Member shall have the right to cure any Borrower Event of Default under the Loan Documents, to the same extent as the Borrower's right to cure such Event of Default.

4. Counterpart Signatures. This Rider may be executed in multiple counterparts each of which shall be an original, but all of which shall constitute one instrument.


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IN WITNESS WHEREOF, the undersigned have caused this Rider to be executed effective as of the Effective Date.

**BORROWER**

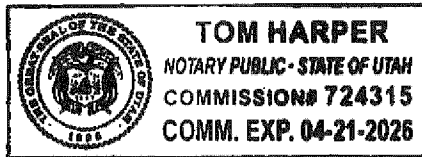
**VICTORY HEIGHTS LLC**, a Utah limited liability company


By: Victory Heights Phase 1 GP LLC, a Utah limited liability company, its Managing Member

By:   
Brandon Blaser,  
Authorized Representative

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of March, 2024, by Brandon Blaser, the Authorized Representative of Victory Heights Phase 1 GP LLC, a Utah limited liability company, the Managing Member of Victory Heights LLC, a Utah limited liability company.



  
Notary Public  
Residing at: Beautified Wash