

DOUGLAS COUNTY, NV **2023-1002359**
Rec:\$40.00
\$40.00 Pgs=38 11/15/2023 11:33 AM
SIGNATURE TITLE - ZEPHYR COVE
SHAWNYNE GARREN, RECORDER

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Kiavi Funding, Inc.
Attn: Post Closing Department
2 Allegheny Center, Nova Tower 2, Suite 200
Pittsburgh, PA 15212

Loan No: 34635179

APN No: 1319-19-212-038

3677-JL

INSTRUCTIONS TO RECORDER:

Index this document as

- (1) a deed of trust;
- (2) an assignment of rents; and
- (3) a fixture filing.

(Space above this line for Recorder's use)

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

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND FIXTURE FILING (the "**Deed of Trust**") is made on 11-08-2023 by :

Fritz & Fern Holdings LLC, A Wyoming Limited Liability Company

("Borrower"), whose address is 517 ELMO TROWER LN, VIRGINIA BCH, VA, 23451, USA

in favor of First American Title Insurance Co, a CA Corp

("Trustee"), whose address is 1 First American Way, Santa Ana, CA 92707.

for the benefit of Kiavi Funding, Inc., a Delaware corporation, as beneficiary ("**Lender**"),

whose address is 2 Allegheny Center, Nova Tower 2, Suite 200, Pittsburgh, PA 15212.

WITNESSETH

WHEREAS, Lender has agreed to provide Borrower with a Loan (the "**Loan**") as evidenced by that certain Promissory Note dated of even date herewith in the amount of \$303,600.00 by and between Lender and Borrower (the "**Note**"); and

WHEREAS, Lender is making the Loan in reliance on this Deed of Trust, and it is a condition precedent to the making of the Loan by Lender that Borrower execute and deliver this Deed of Trust.

NOW, THEREFORE, in consideration of the foregoing and other benefits accruing to Borrower, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees with Lender, as follows:

GRANTING CLAUSES

BORROWER IRREVOCABLY GRANTS, CONVEYS, TRANSFERS AND ASSIGNS TO TRUSTEE, IN TRUST, FOR THE USE AND BENEFIT OF LENDER, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Borrower's present and future estate, right, title and interest in and to the following described property (collectively, the "Property"):

(A) The real property located in the County of DOUGLAS, State of NV commonly known and addressed as:

701 GARY LANE UNIT A, STATELINE, NV, 89449, USA

and more particularly described in Exhibit A attached to this Deed of Trust and incorporated herein by reference (the "Land"); and

(B) All Buildings, Fixtures, Easements, Rents and Profits, Development Rights, Water Rights, and Mineral Rights, including without limitation all present and future Leases relating to the foregoing real property and all guaranties and security and security deposits supporting such Leases (as those terms are defined in Article 1 of this Deed of Trust); and

(C) All of the following related to the assets specified in (A) and (B) above, (i) Books and Records, plans, specifications, surveys (ii) Insurance Policies, title insurance policies, sales contracts, construction contracts, architectural agreements, engineering contracts, service and maintenance contracts, management contracts, and marketing contracts; (iii) work product arising from any such contract or agreement; (iv) all warranties, guarantees, and other similar contract rights and (v) all other tangible personal property located on or used in connection with the foregoing (excluding only Consumer Goods as defined in the Uniform Commercial Code).

THIS DEED OF TRUST SECURES THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (collectively, the "Obligations") in such order of priority as Lender may from time to time elect:

(1) Payment and performance of Borrower's indebtedness and obligations under the Note and this Deed of Trust and all extensions, renewals, modifications, and replacements thereof, including the reserve advance pursuant to the Note and Construction Loan Rider (if applicable) ("Reserve Advance"); and

(2) Payment and performance of any and all other indebtedness which may hereafter be owing by Borrower to Lender under the Note, this Deed of Trust or other Loan Documents, however incurred, including but not limited to the attorneys' fees, court costs, witness fees, expert witness fees, collection costs, and costs and expenses paid by Lender in the preservation and enforcement of its rights and remedies under this Deed of Trust or other Loan Documents.

(3) To the extent that Lender's rights to recover a deficiency from Borrower are subject to California real property law (including without limitation the provisions of Code of Civil Procedure 580a, 580b, 580d, 580e, 726, 726.5 and 736) Borrower and Lender hereby agree and acknowledge that this Deed of Trust shall not secure the following obligations which are hereby excluded from the definition of "Obligations": (i) the obligations of Borrower under Section 2.3 of this Deed of Trust or (ii) any obligations under any other environmental indemnity agreement or (iii) any obligations under any other guaranty or indemnity agreement.

THIS DEED OF TRUST constitutes (i) a personal property security agreement to the extent that it includes personal property assets hereunder that are not real property assets subject to the applicable real property recording statutes (and Borrower hereby grants Lender a security interest in all such personal property assets to secure the Obligations) and (ii) a Fixture Filing in accordance with the Article 9 of the Uniform Commercial Code.

ARTICLE I

DEFINITIONS

For purposes of this Deed of Trust, the following terms shall have the following definitions:

1.1 **Books and Records.** "Books and Records" means all books and records relating to the design, construction, improvement, development, use, ownership, operation, maintenance, repair, lease, taxation or marketing of the Property whether kept in hard copy or electronic form.

1.2 **Buildings.** "Buildings" means all buildings, structures and other improvements now existing or hereafter located on the Land.

1.3 **Condemnation Claims.** "Condemnation Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Borrower now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any condemnation of the Property or other taking of the Property for public or quasi-public use by eminent domain or to the transfer of the Property in lieu of condemnation or any such taking.

1.4 **Condemnation Proceeds.** "Condemnation Proceeds" means all proceeds, tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Condemnation Claims.

1.5 **Covenants and Restrictions.** "Covenants and Restrictions" means all covenants, conditions, restrictions, equitable servitudes, and all other similar matters now or hereafter affecting the Property, including any condominium, planned unit development, or cooperative apartment declaration of covenants, conditions and restrictions, by-laws, articles, rules, and regulations to which Borrower or the Property is subject or bound.

1.6 **Development Rights.** "Development Rights" means all existing and future development rights, development credits, air rights, and options of any kind relating to the Property.

1.7 **Easements.** "Easements" means all existing and future easements, rights of way, licenses, and similar rights relating or appurtenant to the Property and all existing and future rights in or to streets, roads, sidewalks, alleys, strips and gores adjoining or used in connection with the Property.

1.8 **Event of Default.** "Event of Default" means any of the events described in Article 3 of this Deed of Trust.

1.9 **Fixtures.** "Fixtures" means all fixtures, machinery, equipment, building materials, appliances, landscaping, systems, built-in furniture, plumbing, electrical, coverings and other commonly recognized fixtures now or hereafter located in, on, attached or affixed to, or used in connection with the Land or the Buildings, including, but not limited to, all HVAC and utility systems; security and access control equipment; water heaters, showers, bathtubs, tanks, pumps, toilets, sinks, pipes, and other plumbing fixtures and equipment; stoves, ranges, refrigerators, dishwashers, and disposals; laundry equipment; engines, motors, generators, boilers, furnaces, and incinerators; wall, window, and floor coverings, including screens, shades, drapes, and awnings; partitions, doors, windows, cabinets, bookcases, and hardware; chandeliers and other light fixtures; trees, plants and other landscaping; and all attachments, substitutions, accessories, accessions, replacements, improvements, and additions to any or all of the foregoing, all of

which shall conclusively be deemed to be part of the Land and Buildings and conveyed by this Deed of Trust, whether or not affixed or attached to the Land or the Buildings.

1.10 General Partner. “General Partner” means any Person who is acting as a general partner of a partnership.

1.11 Governmental Authorities. “Governmental Authorities” means all governmental or quasi-governmental authorities, boards, bureaus, agencies, commissions, departments, administrative tribunals, and other instrumentalities, judicial and non-judicial authorities, and public utilities having or exercising jurisdiction over Borrower or the Property.

1.12 Governmental Permits. “Governmental Permits” means all permits, approvals, and authorizations now or hereafter issued by all Governmental Authorities for or in connection with the Property, including grading permits, foundation permits, building permits, tentative subdivision map approvals, zone changes, zone variances, conditional use permits, temporary certificates of occupancy, and final certificates of occupancy.

1.13 Governmental Requirements. “Governmental Requirements” means all existing and future laws, ordinances, rules, regulations, orders, and requirements of all Governmental Authorities applicable to Borrower or the Property, including those respecting the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property.

1.14 Guaranty. “Guaranty” means the guaranty agreement or agreements executed by any Guarantor.

1.15 Guarantor. “Guarantor” means the Person or Persons, if any, now or hereafter guaranteeing payment of the Note or payment or performance of any or all of the other Obligations.

1.16 Impositions. “Impositions” means all (a) Taxes; (b) Insurance Premiums; (c) gas, electricity, water, sewer, and other utility charges which are incurred for the benefit of the Property or which may become a lien against the Property; (d) assessments, charges, and fees imposed pursuant to any Covenants and Restrictions; (e) assessments, charges and fees payable with respect to any Easements, Water Rights or Development Rights; (f) principal, interest, and other amounts payable in connection with any Liens; and (g) such other taxes, charges, premiums, assessments and impositions relating to the Property, the payment of which Lender determines to be necessary to protect Lender’s security for the Obligations.

1.17 Improvements. “Improvements” means the Buildings and Fixtures, collectively.

1.18 Insurance Claims. “Insurance Claims” means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Borrower now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise under any policy of insurance which Borrower maintains with respect to the Property or which Borrower is required to maintain under this Deed of Trust (collectively, the “Insurance Policies”).

1.19 Insurance Proceeds. “Insurance Proceeds” means all proceeds, tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Insurance Claims.

1.20 Insurance Premiums. “Insurance Premiums” means all premiums and other amounts payable in connection with procuring or maintaining the Insurance Policies.

1.21 Leases. “Leases” means all existing and future rental agreements, leases, licenses, concessions, occupancy agreements, and other similar agreements affecting the Property, including all subleases at any level.

1.22 **Liens.** "Liens" means all mortgages, deeds of trust, mechanics' liens, and other liens and encumbrances of every kind and nature, other than this Deed of Trust, now or hereafter affecting the Property.

1.23 **Loan Documents.** "Loan Documents" means the Note, this Deed of Trust (together with any riders), the Guaranty, and all other documents executed by Borrower or any of the Guarantors and delivered to Lender at Lender's request in connection with the Loan, and all extensions, renewals, modifications, and replacements of such documents.

1.24 **Manager.** "Manager" means any Person who is acting as a manager of a limited liability company, including any member who is acting in such capacity.

1.25 **Mineral Rights.** "Mineral Rights" means all existing and future right, title, and interest in and to all minerals, oil, gas and other hydrocarbon substances in or on the Property.

1.26 **Person.** "Person" means any natural person or any entity, including any corporation, partnership, joint venture, limited liability company, trust, unincorporated organization, trustee, or Governmental Authority.

1.27 **Property Claims.** "Property Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature (other than the Insurance Claims and Condemnation Claims) which Borrower now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any or all of the following: (a) the Property; (b) any existing or future fact, matter, occurrence, or transaction relating to the Property; or (c) the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

1.28 **Property Proceeds.** "Property Proceeds" means all proceeds, tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Property Claims.

1.29 **Rents and Profits.** "Rents and Profits" means all existing and future rents, royalties, issues, profits, proceeds, revenues, income and other benefits of the Property and all Leases, including all security deposits and prepaid rent.

1.30 **Taxes.** "Taxes" means (a) all taxes, bonds, levies and assessments now or hereafter affecting the Property, including all general and special real and personal property taxes, bonds, and assessments affecting the Property; (b) all other taxes, bonds, levies and assessments which now are or hereafter may become a lien on the Property, including all income, profits, franchise, withholding, and gross receipt taxes; (c) all other charges now or hereafter imposed on or assessed against the Property by any Governmental Authority or arising with respect to the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property; and (d) all taxes, bonds, levies, and assessments now or hereafter imposed by any Governmental Authorities on Trustee or Lender by reason of their respective interests in the Loan Documents, excluding any franchise, estate, inheritance, income, or similar tax imposed on Lender or Trustee.

1.31 **Tenants.** "Tenants" means all tenants and occupants of the Property under the Leases.

1.32 **Water rights.** "Water rights" means all existing and future water, water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), and all water stock relating to the Property.

ARTICLE 2

COVENANTS OF BORROWER

2.1 Performance of Secured Obligations. Borrower shall pay and perform each and all of the Obligations in accordance with their respective terms.

2.2 Preservation of the Property. Borrower (a) shall maintain the Property in good condition and repair; (b) shall promptly repair and restore in a good and workmanlike manner any part of the Property which may be damaged or destroyed, whether or not any Insurance Proceeds are adequate to pay for the cost of such repair and restoration; (c) shall comply and cause the Property to comply with the provisions of all Insurance Policies; (d) shall comply and cause the Property to comply with all Governmental Requirements; (e) shall comply and cause the Property to comply with all Covenants and Restrictions; (f) shall maintain in effect all Governmental Permits; (g) shall not initiate, join in or consent to any change in the zoning, general plan, specific plan, or any other land use classification affecting the Property or any Covenant or Restriction without the prior written consent of Lender; (h) shall not remove, demolish, improve, add to, or alter the Improvements (excluding non-structural alterations which preserve or increase the value of the Property, alterations required by Governmental Requirements and alterations approved by Lender) or change the character or use of the Property without the prior written consent of Lender; (i) shall not commit or permit any waste respecting the Property or impairment of the Property; (j) shall not abandon the Property; (k) shall not commit or permit any act upon the Property in violation of any Governmental Requirements; (l) shall promptly complete in a good and workmanlike manner, and shall pay, when due, all claims for labor performed and for materials furnished in connection with, Improvements which Borrower commences to construct on the Land; and (m) shall paint, cultivate, irrigate, fertilize, fumigate, prune, maintain and do all other acts, in a timely and proper manner, which from the character or use of the Property may be necessary or appropriate to preserve, protect and maintain the value of the Property. Borrower hereby recognizes and acknowledges that the condition and appraisal of the Property and all relevant documents relating to the Property are important and necessary for Lender to protect its position as secured creditor (whether or not Borrower is a debtor in bankruptcy, receivership, liquidation, credit restructuring case or proceeding under state or Federal or bankruptcy law). Therefore, Borrower hereby agrees: (a) to promptly provide to Lender all documents and filings reasonably requested by Lender which relate to (i) the Property, (ii) its condition, (iii) any operations related thereto, (iv) the maintenance thereof, (v) any taxes or assessments thereon, (vi) any insurance therefor, (vii) any liens, claims or interests thereon asserted by third parties, (viii) any leases thereof, and (ix) any rents or profits arising therefrom; (b) to provide Lender or its agents upon two days notice with reasonable opportunity to conduct an internal and external appraisal of the Property and to cooperate with any reasonable requests in connection with such appraisal; and (c) to coordinate with lender to take the foregoing actions on an expediated basis on not mor than one day in the event the Borrower should become a debtor in any bankruptcy, receivership, liquidation or credit restructure case or proceeding under state or Federal bankruptcy law.

2.3 Hazardous Substances. As used in this Section 2.3, (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be

appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, Hazardous Substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

2.4 Insurance. Borrower shall keep the Improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. Each of the Insurance Policies, including the amounts, form, coverage, deductibles, insurer and loss payable and cancellation provisions, shall be acceptable to Lender and the insurance company providing coverage must have rating of at least A-V or better in the latest edition of "Best's Insurance Guide," must be licensed to do business in the state in which the property is located, and must be licensed to transact the lines of insurance required in this transaction. Without limiting any of the terms of this Section, (i) each of the Insurance Policies shall provide that it may be canceled or modified only upon not less than thirty (30) days prior written notice to Lender; and (ii) the fire and extended coverage and other casualty insurance policies which Borrower is required to maintain under this Deed of Trust shall contain a mortgagee's loss payable endorsement acceptable to Lender naming Lender as loss payee and shall be written with liability in an amount equal to the lesser of (x) the original principal amount of the Loan plus any Reserve Advance and (y) the full replacement cost of the Improvements. Borrower shall provide evidence to Lender of all required insurance hereunder on or before the closing of the Loan.

2.5 Insurance Policies. Within thirty (30) days after closing of the Loan, Borrower shall deliver to Lender the originals of all Insurance Policies together with receipts for the full payment of all Insurance Premiums, and Lender shall have the right to hold such policies as long as any Obligations are outstanding. Lender shall not be liable or responsible for the suitability, adequacy, enforceability, validity, amount, form, or content of any Insurance Policies, the solvency of any insurer, or the collection of any Insurance Proceeds, and Borrower shall at all times have full responsibility for all of such matters. Not later than thirty (30) days prior to the expiration of each of the Insurance Policies, Borrower shall deliver to Lender a policy or policies renewing or extending the expiring Insurance Policies together with written evidence showing payment of the Insurance Premiums for such policies. If Borrower fails to deliver any of the Insurance Policies to Lender in accordance with this Deed of Trust, or if any of the Insurance Policies is canceled, Lender, without notice to or demand upon Borrower, shall have the right to obtain such insurance in such form, content and amount and with such insurer as Lender determines to be necessary or appropriate to protect its interest. Without limiting any other provision of this Deed of Trust, all premiums and other costs and expenses paid or incurred by Lender in connection with Lender's obtaining any Insurance Policies under this Section shall be payable by Borrower to Lender on Lender's demand. Neither Trustee nor Lender shall be obligated to obtain or maintain any policy of insurance with respect to the Property. All Insurance Policies relating to the Property and all unearned Insurance Premiums shall automatically inure to the benefit of and be deemed to be assigned to the grantee of the Property at any judicial or nonjudicial foreclosure sale under this Deed of Trust or by any deed in lieu of foreclosure under this Deed of Trust.

2.6 Assignment of Insurance Claims and Proceeds. To secure the Obligations, Borrower grants, transfers, and assigns to Lender the Insurance Claims and Insurance Proceeds.

2.7 Assignment of Condemnation Claims and Proceeds and Other Claims. To secure the Obligations, Borrower grants, transfers, and assigns to Lender the Condemnation Claims, Condemnation Proceeds, Property Claims, and Property Proceeds.

2.8 Payment of Proceeds. Borrower shall cause all Insurance Proceeds, Condemnation Proceeds and Property Proceeds (collectively, the "Proceeds") to be paid or delivered directly to Lender. Lender shall at all times have the right but not the obligation (a) to demand, collect, accept, receive and give receipts for any and all of the Proceeds; and (b) to direct any Person to pay or deliver any or all of the Proceeds directly to Lender. Nothing contained in this Deed of Trust shall be deemed to obligate Lender to make any inquiry as to the sufficiency of any Proceeds received by Lender. If for any reason Borrower receives any Proceeds, Borrower shall immediately pay, assign, endorse or deliver such Proceeds to Lender in the original form in which received by Borrower and shall not commingle such Proceeds with any of Borrower's other funds or property.

2.9 Prosecution and Settlement of Claims. Prior to the occurrence of any Event of Default, Borrower shall have a license to prosecute and enforce the Insurance Claims, Condemnation Claims, and Property Claims (collectively, the "Claims"). Lender shall at all times have the right to appear in, defend, and prosecute any action or proceeding arising out of or relating to any or all of the Claims if Lender determines that such action is necessary or appropriate to protect Lender's interest in connection with the Obligations. Upon the occurrence of an Event of Default, Borrower's license to prosecute and enforce the Claims shall be revoked upon, and to the extent provided in, notice by Lender to Borrower. Following such revocation, Lender, at its option, shall have the exclusive right to prosecute and enforce any or all of the Claims to the extent provided in Lender's notice of revocation and to compromise, adjust, settle or dismiss any or all of the Claims, whether or not Lender has taken possession of the Property. Without Lender's prior written consent, Borrower shall not (a) sell, transfer, pledge, hypothecate or otherwise dispose of or abandon any or all of the Claims; or (b) compromise, adjust, settle, or dismiss any or all of the Claims.

2.10 Title Policy. Upon recordation of this Deed of Trust, Borrower shall cause the Lender to be furnished with an lender's policy of title insurance acceptable to Lender (a) written in an amount equal to the principal amount of the Loan; (b) issued by a title insurance company acceptable to the Lender; (c) showing title to the Property to be vested in a manner acceptable to the Lender; (d) containing a legal description of the Property satisfactory to the Lender; (e) insuring this Deed of Trust as a first lien on the Property, subject only to such exceptions as have been approved in writing by the Lender; (f) containing such title insurance endorsements as may be required by the Lender; and (g) otherwise acceptable to the Lender in form and substance, including the policy revision date. Within five (5) business days after the Lender's request from time to time, Borrower, at its expense, shall furnish the Lender with such additional title insurance endorsements as the Lender may require insuring the continuing first priority of this Deed of Trust. Borrower shall at all times cooperate with the Lender and its title insurer and provide the Lender's title insurer with such information as such title insurer may request or require in order to provide the Lender with the policies and endorsements described in this Section.

2.11 Subordinate Mortgages. Borrower shall not grant or permit any other Lien on the Property ("**Subordinate Mortgage**") without Lender's prior written consent. To obtain Lender's written consent, which Lender may withhold for any reason in its discretion, Borrower must first deliver to Lender a written agreement, acceptable to Lender, executed by the holder of the Subordinate Mortgage which provides that (a) the Subordinate Mortgage is and shall at all times remain unconditionally subject and subordinate to this Deed of Trust; (b) if any action or proceeding is commenced to foreclose the Subordinate Mortgage, no Tenant under any Lease shall be named as a defendant in such action or proceeding, nor shall such action or proceeding terminate any Lease, without Lender's prior written consent; (c) all Rents and Profits, whether collected directly by the holder of the Subordinate Mortgage or through a receiver, shall be applied first to the Obligations, second to the payment of the Impositions, and thereafter to payment of maintenance and operating costs relating to the Property; and (d) the holder of the Subordinate Mortgage shall give written notice to Lender not later than ten (10) days prior to commencing any judicial or nonjudicial action or proceeding to foreclose the Subordinate Mortgage.

2.12 Permitted Leasing, Assignment of and Compliance with Leases. Notwithstanding Section 3.12 below, Borrower shall have the right to enter into Leases in the ordinary course of Borrower's business without Lender's prior written consent, provided that all of the following conditions are satisfied with respect to any such Lease or modification thereto: (a) the term of such Lease, including any extension or renewal options, does not exceed

a total of five (5) years; (b) the form used for such Lease represents a commercially reasonable lease form or has been approved in writing by Lender prior to Borrower's execution of the Lease; (c) such Lease is unconditionally subordinate to this Deed of Trust and contains an attornment provision consistent with Section 2.13 below; (d) no Event of Default has occurred and is continuing at the time of Borrower's execution of such Lease; (e) Borrower provides Lender with an accurate and complete copy of such Lease within ten (10) business days after such Lease is executed by Borrower; (f) Borrower does not collect rent for more than one (1) month in advance; and (g) Borrower does not in any other manner impair Lender's rights with respect to or interest in the Rents and Profits. Upon Lender's request, Borrower shall execute, acknowledge and deliver to Lender an absolute and unconditional assignment acceptable to Lender of all of Borrower's interest in all Leases and all guaranties of and security for the Tenants' respective obligations under the Leases. Borrower shall perform and discharge all obligations of the lessor under the Leases in accordance with the terms thereof and shall diligently enforce all remedies available to Borrower in a commercially reasonable manner in the event of a default by the Tenant under any Lease.

2.13 Attornment at Lender's Option. Each Tenant who enters into a Lease for the Property after the date of recordation of this Deed of Trust (each such Lease is referred to as a "Subordinate Lease") and who has not entered into a written non-disturbance and attornment agreement with Lender shall be deemed to have agreed to attorn to Lender and accept Lender as the landlord under its Lease on the terms of this Section. If Lender acquires title to the Property by judicial or nonjudicial foreclosure under this Deed of Trust or by deed in lieu of foreclosure under this Deed of Trust, Lender, at its option, shall have the right to require any or all Tenants under Subordinate Leases to attorn to and accept Lender as the landlord under such Tenant's Subordinate Lease (the "Attornment Option") by giving written notice to such Tenant within thirty (30) days after the date on which Lender acquires title to the Property (the "Acquisition Date"). If Lender exercises the Attornment Option with respect to any Subordinate Lease, such attornment shall be effective and self-operative as of the Acquisition Date without the execution of any further documents on the part of the Tenant, Lender, or any other party, and the Tenant under the Subordinate Lease shall be bound to Lender under all of the terms, covenants, and conditions of the Subordinate Lease for the remaining balance of the term thereof, with the same force and effect as if Lender were the landlord under such Lease. Whether or not Lender exercises its Attornment Option with respect to any Subordinate Lease, Lender (a) shall not be liable for any act or omission of any prior landlord under any Subordinate Lease, including Borrower; (b) shall not be subject to any offset, defense, or claim which any Tenant may have against any prior landlord under any Subordinate Lease, including Borrower; (c) shall not be obligated (i) to return any security deposit now or hereafter paid by any Tenant; (ii) to return any prepaid rent or other amounts prepaid by any Tenant; or (iii) to grant any Tenant a credit for any such security deposit, prepaid rent or other prepaid amounts (excluding monthly rent and other charges which have not been prepaid for more than one month in advance), except to the extent, if any, that Lender has actually and unconditionally received such security deposit, prepaid rent or other prepaid amounts; and (d) shall not be obligated to complete the construction of any or all Improvements. Without limiting the terms of this Section, upon Lender's request, each Tenant under a Subordinate Lease shall execute and deliver to Lender any document which Lender determines to be necessary or appropriate to evidence such Tenant's attornment to Lender on the terms of this Section, including a new lease with Lender on the same terms and conditions as the Subordinate Lease for a term equal to the unexpired term of the Subordinate Lease. Nothing contained in this Section shall be deemed to obligate Lender to recognize any Subordinate Lease or accept an attornment by any Tenant upon Lender's acquisition of title to the Property. If Lender elects not to exercise the Attornment Option within the time period specified in this Section with respect to any Subordinate Lease, such Subordinate Lease and all of the rights, privileges and powers of the Tenant thereunder shall automatically terminate and shall be of no further force or effect from and after the Acquisition Date.

2.14 No Liability by Lender. Nothing contained in this Deed of Trust shall be deemed to obligate Lender to prosecute or enforce any or all of the Claims nor shall Lender have any liability or responsibility for any failure or delay by Lender in prosecuting or enforcing any or all of the Claims or to collect any or all of the Proceeds. Borrower shall at all times have the right to determine and follow its own policies and practices in the conduct of its business, subject to the terms and conditions of the Loan Documents.

2.15 Application of Proceeds. Lender, at its option, shall have the right (a) to apply any or all Proceeds received by Lender to any or all of the Obligations in such order and manner as Lender shall determine, whether or

not such Obligations are then due and payable and without regard to the adequacy or impairment of the security for the Obligations; (b) to release any or all of the Proceeds received by Lender for payment of the costs of repair or reconstruction of the Property on such terms and conditions as may be acceptable to Lender; or (c) to release any or all of the Proceeds received by Lender to Borrower on such terms and conditions as may be acceptable to Lender. To the extent it is determined that Lender has applied payments in any order prohibited by any Governmental Authority, Lender shall refund to Borrower any fees and/or interest associated with the misapplication of payments. Acceptance of such refund by Borrower shall be deemed sufficient remedy and Borrower will have no right to seek further claims or damages from Lender.

2.16 Release of Proceeds for Reconstruction. Without limiting the generality of Section 2.15 above, if Lender elects to release any Proceeds for repair or reconstruction of the Property, at Lender's option, such release shall be conditioned on Borrower's satisfaction of the following conditions within one hundred and twenty (120) days after the occurrence of the damage requiring the repair or reconstruction: (a) Borrower's deposit with Lender of such funds in addition to the Proceeds as Lender determines to be necessary to pay all direct and indirect costs relating to the repair or reconstruction of the Property; (b) the establishment of a procedure acceptable to Lender for Lender's disbursement of the Proceeds; (c) Lender's receipt and approval of final plans and specifications and a cost breakdown for the repair or reconstruction of the Property; (d) Lender's receipt and approval of (i) a general construction contract for the repair or reconstruction of the Property executed by Borrower and a contractor acceptable to Lender; and (ii) payment and performance bonds written on such general contractor issued by a surety acceptable to Lender; (e) evidence acceptable to Lender that (i) the repair and reconstruction of the Property can be completed and a final and unconditional certificate of occupancy for the Property can be issued not later than thirty (30) days before the maturity date of the Note; (ii) upon completion of the repair or reconstruction of the Property, the income from the Property will be sufficient to pay all Impositions, operating expenses of the Property and installment payments due in connection with the Loan; (iii) leases acceptable to Lender will be in effect or remain in effect upon completion of the repair or reconstruction of the Property; (iv) upon completion of the repair or reconstruction of the Property, the fair market value of the Property will be at least as great as it was prior to the date on which the damage or condemnation occurred as shown in an appraisal acceptable to Lender; (v) there has been no adverse change in the financial condition of Borrower or any Guarantors since the date of this Deed of Trust; and (vi) no Event of Default exists; and (f) such additional conditions as Lender may establish.

2.17 Taxes and Impositions. Borrower (a) shall pay all Taxes at least ten (10) days before delinquency; and (b) shall pay all other Impositions when due. Upon Lender's request, Borrower shall deliver to Lender receipts and such other substantiating documentation as may be required by Lender to evidence payment of all Impositions by Borrower in accordance with this Section.

2.18 Absolute Assignment of Rents and Profits.

(a) **Absolute Assignment.** Borrower absolutely, irrevocably and unconditionally grants, transfers and assigns to Lender all Rents and Profits. Prior to the occurrence of an Event of Default, Borrower shall have a license to collect and retain on the terms of this Section 2.18 all Rents and Profits as they become due and payable. Upon the occurrence of an Event of Default, Borrower's license to collect the Rents and Profits shall automatically be revoked without notice to Borrower. Following such revocation, Lender shall be entitled to collect and retain all Rents and Profits, whether or not Lender has taken possession of the Property, and Borrower shall immediately pay, deliver or cause to be delivered to Lender any Rents and Profits then held or thereafter collected by Borrower. All Rents and Profits collected by or on behalf of Lender may be applied by Lender to the Obligations in such order and amounts as Lender may determine. If Lender elects to seek the appointment of a receiver following the occurrence of an Event of Default, Borrower irrevocably and unconditionally consents to the appointment of a receiver without regard to the adequacy of the security for any of the Obligations. Notwithstanding anything to the contrary contained in this Deed of Trust, the assignment of Rents and Profits contained in this Section is an absolute assignment and not an assignment as security. Neither the assignment of Rents and Profits contained in this Section nor any action taken by Lender to collect the Rents and Profits shall be deemed to make Lender a mortgagee-in- possession of the Property or shall be deemed to render Lender directly or indirectly liable or responsible for (i) the

use, control, condition, care, operation, occupancy, management, repair, or leasing of the Property; (ii) the production of Rents and Profits from the Property; or (iii) to the extent permitted under applicable law, the performance or observance of any or all of Borrower's duties, obligations, representations, or warranties under any Leases or other agreements relating to the Rents and Profits. Lender shall have no responsibility or liability of any kind for any failure or delay by Lender in enforcing any of the terms or conditions of this Section 2.18.

(b) **Applications of Rents and Profits Prior to Revocation of License.** Borrower shall apply the Rents and Profits to the payment of all reasonable and necessary operating costs and expenses of the Property, installment payments due in connection with the Loan, payment of Impositions, and a reasonable reserve for future reasonable and necessary expenses, repairs and replacements relating to the Property before using the Rents and Profits for any other purpose which does not directly benefit the Property.

(c) **Notices to Tenants.** Upon revocation of the license described in Section 2.18(a) above, Borrower irrevocably authorizes and directs all Tenants under the Leases to comply with any notice or demand by Lender for payment to Lender of any Rents and Profits or for the performance of any of the Tenant's other respective obligations under the Leases, regardless of any conflicting demand by Borrower or notice by Borrower to any Tenant that Lender's demand is invalid or wrongful. No Tenant shall have any duty to inquire as to whether any default by Borrower has occurred under the Loan Documents in connection with any notice or demand by Lender under this Section.

2.19 Request for Lender's Consent to Transfers. All requests by Borrower for Lender's consent to transfers under Section 3.12 below (a) shall specifically describe the transaction with respect to which Lender's consent is requested; (b) shall be delivered to Lender not less than fifteen (15) days before Borrower proposes to take the action with respect to which Lender's consent is requested; and (c) shall be accompanied by complete and accurate copies of all documents relating to the transaction with respect to which Lender's consent is requested, including financial statements and other information regarding the proposed transferee. Borrower acknowledges and agrees that Lender's right to withhold its consent, in its sole and absolute discretion, to any or all of the events described in Section 3.12 below is based, in part, on the fact that Borrower's particular financial condition, credit history, character, experience, ability and expertise, as represented by Borrower to Lender, were material and important factors in Lender's decision to make the Loan, and that Lender will continue to rely on such matters to insure satisfactory compliance with the Loan Documents during the entire term of the Loan. If Lender, in its sole and absolute discretion, consents to any of the transfers described in Section 3.12 below, such consent shall not be deemed to release Borrower or any other Person liable for payment or performance of the Obligations, and Borrower and such Persons shall continue to remain liable for payment and performance of the Obligations in accordance with the terms of the Loan Documents, unless expressly released pursuant to a further written agreement signed by Lender.

2.20 Fixtures. Notwithstanding Section 3.12 below, Borrower may from time to time replace any Fixtures constituting a part of the Property in the ordinary course of Borrower's business, provided that (a) the replacement property for such Fixtures is at least equivalent in value, character, and quality to the Fixtures being replaced; (b) Borrower has good and marketable title to such replacement property free and clear of all liens, claims, and interests other than the lien of this Deed of Trust; and (c) this Deed of Trust shall constitute a first lien on such replacement Property.

2.21 Notice of Certain Matters. Borrower shall promptly notify Lender in writing of (i) any claim, demand, right, or Lien relating to the Property which may be adverse to the lien of this Deed of Trust; (ii) any material loss, depreciation, or adverse change in the value of the Property and any other occurrence which may materially and adversely affect Lender's lien on the Property; (iii) any material adverse change in Borrower's ability to perform any or all of the Obligations; (iv) any event or condition which constitutes an Event of Default; and (v) any dispute between Borrower and any Governmental Authority relating to the Property which may have a material adverse effect on the Property.

2.22 Inspection. Lender shall have the right at all reasonable times (a) upon reasonable prior written or telephonic notice (except that no such notice shall be required in the case of an emergency or any inspection limited to the public areas or common areas of the Property) to enter upon and inspect the Property, including any entry which Lender determines is necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Lender under the Loan Documents; (b) to contact any Person to verify any information provided or disclosed by Borrower to Lender; and (c) to release such information regarding the Property, Borrower, or the Obligations as Lender may determine to be necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Lender under the Loan Documents. Lender shall have no obligation or duty to inspect the Property, and all such inspections by Lender shall be for Lender's sole benefit and not for the benefit of Borrower or any other Person.

2.23 Defense of Actions and Protection of Security by Borrower. Borrower shall appear in and defend any action or proceeding commenced by any Person other than Lender which affects or which Lender determines may affect any or all of the following: (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Lender's, Trustee's or Borrower's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Lender by reason of its interest in the Property. Borrower shall promptly commence and diligently prosecute all actions and proceedings which are necessary or appropriate or which Lender determines may be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property Proceeds; or (iii) to preserve, protect, maintain, and defend the Property and Lender's lien thereon.

2.24 Enforcement of Covenants and Restrictions. If any of the Covenants and Restrictions apply to Persons owning or occupying real property which is adjacent to or in the vicinity of the Property, Borrower shall diligently enforce the Covenants and Restrictions against such Persons if (a) such Persons have breached their obligations under the Covenants and Restrictions; and (b) such breach has not been cured by such Persons within ninety (90) days after a request by Lender to Borrower to enforce the Covenants and Restrictions.

2.25 Further Assurances. Upon Lender's request, Borrower shall execute, acknowledge and deliver to Lender such further documents and agreements and take such further actions as Lender may reasonably require from time to time to effectuate or carry out the purposes of the Loan Documents or to evidence, perfect, maintain, preserve or protect Lender's lien on the Property, including Borrower's execution of security agreements, assignments, financing statements, and continuation financing statements. Upon Lender's request, Borrower shall execute, acknowledge and deliver to Lender an assignment acceptable to Lender of such additional rights, privileges, Governmental Permits, and documents relating to the Property as Lender may reasonably determine to be necessary or appropriate in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

ARTICLE 3

EVENTS OF DEFAULT

Lender, at its option, shall have the right to declare Borrower to be in default under this Deed of Trust and the other Loan Documents upon the occurrence of any or all of the following events:

3.1 Payment of Note and Other Monetary Obligations Under Loan Documents. If (a) an Event of Default occurs under the terms of the Note; or (b) Borrower fails perform any of its other obligations under the Loan Documents or under any other document with Lender requiring the payment of money to Lender or any third Person within ten (10) days after the date on which such indebtedness or monetary obligation is due.

3.2 Performance of Non-Monetary Obligations Under Loan Documents. If Borrower breaches or otherwise fails to perform any of its non-monetary obligations to Lender or any third Person under any of the Loan Documents or under any other document with Lender when due.

3.3 Misrepresentation. If any request, statement, information, certification, or representation, whether written or oral, submitted or made by Borrower to Lender in connection with the Loan is false or misleading in any material respect.

3.4 Insolvency of Borrower. If (a) a petition is filed by or against Borrower under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency or similar law; (b) a receiver, liquidator, trustee, custodian, sequestrator, or other similar official is appointed to take possession of Borrower or the Property, or Borrower consents to such appointment; (c) Borrower makes an assignment for the benefit of creditors; provided, however, that Borrower shall have thirty (30) days within which to cause any involuntary bankruptcy proceeding to be dismissed or the involuntary appointment of any receiver, liquidator, trustee, custodian, or sequestrator to be discharged. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure provisions contained in the Loan Documents.

3.5 Performance of Obligations to Senior Lien Holders or Third Persons. If (i) Borrower fails to pay any of its indebtedness or to perform any of its obligations under any agreement between Borrower and any other Person who holds a Lien senior to this Deed of Trust when due; or (ii) Borrower fails to pay any of its indebtedness or to perform any of its obligations when due under any other material document between Borrower and any other Person.

3.6 Attachment. If all or any material part of the assets of Borrower or Guarantor are attached, seized, subjected to a writ or levied upon by any court process and Borrower fails to cause such attachment, seizure, writ or levy to be fully released or removed within sixty (60) days after the occurrence of such event. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents.

3.7 Injunctions. If a court order is entered against Borrower enjoining the conduct of all or part of its business and Borrower fails to cause such injunction to be fully stayed, dissolved or removed within sixty (60) days after such order is entered. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents.

3.8 Dissolution. The dissolution, liquidation, or termination of existence of Borrower or any of Borrower's General Partners or Managers.

3.9 Impairment of Priority. If (i) the priority of this Deed of Trust or Lender's security interest under any of the other agreements securing any or all of the Obligations is impaired for any reason; or (ii) the value of the Property has deteriorated, declined or depreciated as a result of any intentional tortious act or omission by Borrower.

3.10 Condemnation. If all or any material part of the Property is transferred to any Governmental Authority as a result of any condemnation proceeding or action with respect to all or any material part of the Property.

3.11 Failure to Repair Casualty. If there is an uninsured casualty with respect to the Property and Borrower (a) fails to commence repairs and reconstruction of the Property within ninety (90) days after such damage; or (b) thereafter fails to diligently prosecute such repairs and reconstruction to completion.

3.12 Sales, Transfers and Further Encumbrances. If any one of the following events occurs without Lender's prior written consent, which may be withheld in Lender's sole and absolute discretion:

(a) the sale, conveyance, transfer, mortgage, encumbrance, lease (except for (i) the leasing of space in the Improvements which is permitted under Section 2.12 of this Deed of Trust and (ii) the conveyance or transfer of any part or any interest in the Property to a revocable family trust affiliated with Borrower, provided that such conveyance or transfer is solely for estate planning purposes), or alienation of all or any part of the Property or any interest in the Property, whether voluntary or involuntary, or Borrower's grant of any option or agreement to effect any such transaction.

(b) if Borrower or any General Partner or Manager of Borrower is a partnership, the admission, withdrawal, retirement or removal of any General Partner of Borrower or any of Borrower's General Partners or Managers, or the sale or transfer of more than forty-nine percent (49%) of the beneficial interests in Borrower or any of Borrower's General Partners or Managers.

(c) if Borrower or any General Partner or Manager of Borrower is a corporation, the sale or transfer of an aggregate of more than forty-nine percent (49%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Deed of Trust.

(d) if Borrower or any General Partner or Manager of Borrower is a limited liability company, the appointment, withdrawal, retirement or removal of any Manager of Borrower or any of Borrower's General Partners or Managers or the sale or transfer of more than forty-nine percent (49%) of the beneficial interests in Borrower or any of Borrower's General Partners or Managers.

(e) if Borrower or any General Partner or Manager of Borrower is an individual, the death or incompetency of such Person, except where applicable law limits or prohibits Lender's declaration of a default based on such occurrences; provided, however, that Lender shall not declare an Event of Default to exist based solely on the death or mental incompetence of any individual Borrower, General Partner, or Manager if, within ninety (90) days after the occurrence of such event, a substitute is appointed, and Lender determines that the financial condition, credit history, character, experience, ability and expertise of such substitute is otherwise acceptable.

3.13 Default by Guarantor. If Guarantor fails to pay any of its indebtedness or perform any of its obligations under the Guaranty when due or the revocation, limitation or termination or attempted revocation, limitation or termination of any of the obligations of Guarantor under the Guaranty, except in accordance with the express written terms of the Guaranty.

3.14 Misrepresentation by Guarantor. If any request, statement, information, certification, or representation, whether written or oral, submitted or made by Guarantor to Lender in connection with the Loan or any other extension of credit by Lender to Borrower or such Guarantor is false or misleading in any material respect.

3.15 Cross-Default. If Borrower, or any Affiliated Borrower (as hereinafter defined), fails to pay any of its indebtedness or to perform any of its obligations as to any other loan or loans or any other obligation owed to Lender when due. As used in this Section, "Affiliated Borrower" means, any borrower (individual or entity) directly or indirectly controlling, controlled by, or under common control with, Borrower, and "control" means an ownership interest equal to or greater than 10% of the entity or the ability to direct the management or affairs of that entity, whether through ownership, by contract or otherwise.

ARTICLE 4

REMEDIES

Upon Lender's election to declare Borrower to be in default under this Deed of Trust and the other Loan Documents pursuant to Article 3 above, Borrower shall be deemed to be in default under this Deed of Trust and the other Loan Documents, and Lender shall have the following rights and remedies:

4.1 Entry by Lender. Lender shall have the right (a) to enter, take possession of, and manage, operate and lease the Property; (b) to take possession of any or all Books and Records; (c) to collect any or all Rents and Profits, whether or not Lender has taken possession of the Property; and (d) to take any or all actions which Lender determines to be necessary or appropriate in connection therewith or to preserve, protect, maintain and defend the Property and Lender's lien thereon, including (i) the exercise and enforcement of all of Borrower's rights under any or all of the Leases; (ii) the termination, acceptance of a surrender, modification or amendment of any or all of the Leases; (iii) the execution of new Leases on such terms and conditions as Lender determines to be appropriate; and (iv) the repair, alteration, improvement or completion of the Property in such manner and to such extent as Lender determines to be necessary or appropriate. If Lender elects to take possession of the Property or to take any or all of the other actions described in this Section by court process, Borrower irrevocably and unconditionally agrees that a receiver may be appointed by a court for such purpose pursuant to Section 4.5 below.

4.2 Judicial Action. Lender shall have the right to commence an action or proceeding to foreclose this Deed of Trust and to enforce any or all of the terms of the Loan Documents, including specific performance of the covenants of Borrower under this Deed of Trust.

4.3 Foreclosure by Power of Sale.

(a) **Declaration and Notice of Default.** Lender shall have the right (i) to cause the Property to be sold under the power of sale contained in this Deed of Trust in any manner permitted by applicable law; and (ii) to deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause the Property to be sold, which notice the Trustee or Lender shall cause to be recorded as required by law. Upon the expiration of such period of time after the recordation of such notice of default and election to sell and the giving of such notice of sale as may then be required by law, and without the necessity of any demand on Borrower, Trustee, at the time and place specified in the notice of sale, shall sell the Property at public auction to the highest bidder for cash in U.S. Dollars payable at the time of sale. Lender or any obligee, creditor, or the holder or holders of the Note or Loan Documents may bid and purchase at such sale.

(b) **Postponements; Multiple Parcels.** To the extent permitted by law, Trustee may, and upon request of Lender shall, from time to time, postpone any sale hereunder by public announcement at the time and place noticed for such sale or may, in its discretion, give a new notice of sale. If the Property consists of several lots, parcels or items of property, Lender shall have the exclusive right (i) to designate the order in which such lots, parcels or items shall be offered for sale or sold; and (ii) to elect to sell such lots, parcels or items through a single sale, through two or more successive sales, or in any other manner Lender determines to be in its best interest. Any Person, including Borrower, Trustee and Lender, may purchase at any sale under this Deed of Trust, and Lender shall have the right to purchase at any such sale by crediting upon the bid price the amount of all or any part of the Obligations. If Lender determines to sell the Property in more than one sale, Lender may, at its option, cause such sales of the Property to be conducted simultaneously or successively, on the same day or on such different days or times and in such order as Lender may determine, and no such sale shall terminate or otherwise affect the lien of this Deed of Trust on any part of the Property that has not been sold until all Obligations have been paid in full.

(c) **Costs of Sale; Deed to Purchaser.** Borrower shall pay all costs, fees, and expenses of all sales of the Property under this Deed of Trust, including the costs, fees, and expenses (including attorneys' fees) of Trustee and Lender, together with interest thereon at the interest rate applicable to principal under the Note or, with

respect to Trustee, the maximum rate permitted by law to be charged by Trustee. Upon any sale under the power of sale contained in this Deed of Trust, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied. The recitals in any such deed or deeds of any matter or facts, including the existence of any default by Borrower, the giving of notice of default and notice of sale, and other facts affecting the regularity or validity of such sale or sales, shall be conclusive proof of the truth of such facts and matters, and any such deed or deeds shall be conclusive against all Persons as to such facts and matters recited therein. A sale of less than all of the Property or any defective or irregular sale under this Deed of Trust shall not exhaust, impair or otherwise affect the power of sale contained in this Deed of Trust, and subsequent sales of the Property may be made under this Deed of Trust until all Obligations have been satisfied or until the entire Property has been sold without defect or irregularity. If Lender elects to cause the Property to be sold under the power of sale contained in this Deed of Trust, Lender shall deposit with the Trustee this Deed of Trust, the Note, and such receipts and evidence of such other Obligations as Trustee may reasonably require.

4.4 Application of Sale Proceeds. Trustee shall apply the proceeds of the sale or sales conducted by Trustee in the following order of priority: (a) first, to payment of all expenses of such sale or sales and all costs, expenses, fees, and liabilities of Trustee and this trust, including attorneys' fees, costs of a trustee's sale guaranty, costs of other evidence of title, and Trustee's fees in connection with such sale or sales; (b) second, to all amounts advanced or disbursed by Trustee or Lender under any of the terms of this Deed of Trust which have not then been repaid, together with interest thereon at the rate applicable to principal under the Note or, with respect to Trustee, the maximum rate permitted by law to be charged by Trustee; (c) third, to the payment of all other Obligations in such order and amounts as Lender determines; and (d) the remainder, if any, to the Person or Persons legally entitled thereto.

4.5 Appointment of a Receiver. Lender shall have the absolute and unconditional right to apply to any court having jurisdiction and obtain the appointment of a receiver or receivers of the Property, and Borrower irrevocably and unconditionally consents to such appointment and agrees that Lender shall have the right to obtain such appointment (a) without notice to Borrower or any other Person; (b) without regard to the value of the Property or any other collateral securing the Obligations; and (c) without acceleration of the Obligations or commencement of foreclosure proceedings under this Deed of Trust. Any such receiver or receivers shall have the usual powers and duties of receivers in similar cases and all powers and duties necessary or appropriate to exercise the rights of Lender as provided in this Deed of Trust.

4.6 Protection of Lender's Security. Lender or Trustee, without obligation to do so and without notice to or demand on Borrower, and without releasing Borrower from any of its Obligations or waiving Lender's rights under the Loan Documents, shall have the right to perform any Obligation which Borrower has breached in such manner, at such time, and to such extent as Lender or Trustee determines to be necessary or appropriate to preserve, protect, maintain and defend the Property and Lender's lien thereon.

4.7 Assembly of Property. Upon Lender's request, Borrower shall assemble and make available to Lender at the location of the Land all Property which has been removed from or which is not located on the Land.

4.8 Rescission of Notice of Default. Prior to the conduct of any sale under the power of sale contained in this Deed of Trust, Lender, at its option, shall have the right to rescind any notice of default and election to sell the Property by delivering to Trustee a written notice of rescission executed by Lender which, when recorded, shall cancel the foreclosure proceedings which have been commenced by the recordation of such notice of default and election to sell. Lender's rescission of any notice of default and election to sell pursuant to this Section or under applicable law shall not constitute or be construed as a waiver of any Event of Default or impair, prejudice or otherwise affect (a) Lender's right to record a new notice of default and election to sell the Property based on the same or any other Event of Default; or (b) Lender's rights and remedies in connection with the Obligations.

4.9 Exercise of Rights Under Other Loan Documents and Laws. Lender shall have the right to exercise any or all rights and remedies which Lender may have under any or all of the other Loan Documents and all

other applicable law, including without limitation the applicable Uniform Commercial Code as it relates to such personal property assets as are encumbered under this Agreement.

4.10 Continuing Recourse Liability. Notwithstanding any contractual or statutory defense to, or prohibition of, (x) continuing liability on the Loan or the Note or the other Loan Documents or (y) liability for any deficiency remaining on the Loan, the Note and or any other Loan Document after foreclosure upon any item of Property (collectively "Deficiency Defense"), Borrower hereby agrees, to the extent not prohibited by applicable law, that:

(a) Borrower shall be continue to be liable for, and shall be subject to full recourse liability for, all amounts owed under the Loan, the Note or any other Loan Documents if any of the following conditions occur:

(i) in the event of (1) the commencement of a case by Borrower or against Borrower by any person or entity other than Lender or any person or entity affiliated with Lender under Title 11 of the United States Code (11 U.S.C. §§101, et seq.) or any successor statute (the "**Bankruptcy Code**") or under any other law governing any federal or state bankruptcy, insolvency, reorganization, or other similar proceeding (collectively, a "**Bankruptcy Proceeding**"), or (2) the consent of the Borrower to any Bankruptcy Proceeding; or (3) the failure of Borrower to oppose in good faith and to the maximum extent permitted by law of such involuntary Bankruptcy Proceeding; or (4) if any involuntary Proceeding is filed, the failure of Borrower to promptly stipulate to entry of an order granting Lender relief from the "automatic stay" under 11 U.S.C, 342 to proceed with a foreclosure of the Property, or (5) any collusion by Borrower with other creditors to cause, assist, or support such involuntary Bankruptcy Proceeding.

(ii) in the event that Guarantor joins or consents to any Bankruptcy Proceeding for Borrower or opposes any stipulation or motion seeking to grant Lender relief from the "automatic stay" under 11 U.S.C 342 to proceed with a foreclosure of the Property.

(iii) in the event that Borrower makes a transfer of any interest in the Borrower or in the Property or makes or allows to exist an encumbrance on the Property or on an interest in the Borrower, (1) that is not expressly permitted pursuant to the terms, conditions, and provisions of the Loan Documents and (2) without the prior express written approval of the Lender and (3) that is not cured within thirty (30) days after written notice from the Lender.

(b) Borrower shall be continue to be liable for, and shall be subject to full recourse liability for, all amounts owed under the Loan, the Note and the other Loan Documents minus any recovery the Lender is successful in collecting on any title insurance policy it holds in connection with the Property in the event that the Lender is prevented from acquiring title to the Property after the occurrence of an Event of Default) because of the failure of the Borrower's title to the Property under applicable federal, state, or local laws due to the commission of a criminal act by the Borrower or an affiliate of the Borrower as a result of which the applicable governmental entity is entitled to (under such applicable law) and does, take title to the Property.

(c) Borrower shall be continue to be liable for, and shall be subject to full recourse liability for, all damages and losses incurred by Lender directly or indirectly arising out of or relating to any of the following: (1) fraud or misrepresentation by Borrower in connection with or relating to the Loan; (2) waste or willful mismanagement by Borrower with respect to any or all of the Property; (3) the application by Borrower of the Loan proceeds in any manner or for any

purpose other than as specified in or required by the Loan Documents; (4) the removal or disposition by Borrower of any or all of the Property in violation of any of the terms of any of the Loan Documents; (5) any failure by Borrower to pay any Impositions in accordance with the Loan Documents, (6) the misapplication or misappropriation by Borrower of Insurance Proceeds (7) failure to deliver to Lender condemnation proceeds, insurance proceeds, or other proceeds of the Property or other similar proceeds, funds or payments, or other benefits of all or part of any collateral; (8) the misapplication or misappropriation of any Rents and Profits, prepaid rents, security deposits and similar sums paid to Borrower or any other Person in connection with any or all Leases of any part of the Property in violation of the terms of the Loan Documents; (9) recovery of amounts, damages, costs and expenses, including without limitation attorneys' fees, owing or payable to the Lender by Borrower relating to certain environmental matters or under any secured or unsecured indemnity agreement relating to Hazardous Substances executed by Borrower in connection with the Loan, including without limitation under (A) any Environmental Indemnity Agreement executed by Borrower in connection with the Loan; and (B) all terms of the Loan Documents which constitute "environmental provisions" under applicable law (including without limitation California Code of Civil Procedure Section 726.5 and 736, as such Section may be amended from time to time); respectively; and (10) all amounts owing to the Lender by Borrower under any other indemnification provision contained in the Loan Documents or with respect to claims asserted by any third Person against the Lender or liabilities incurred by the Lender with respect to any third Person, which claims or liabilities directly or indirectly result from or arise out of any act or omission of Borrower or from the occupancy or use of all or part of the Property by Borrower prior to Lender's acquisition of title to such Property.

(d) To the extent not prohibited by applicable law, Borrower hereby waives any and all rights and protections of the Deficiency Defenses.

ARTICLE 5

WARRANTIES AND REPRESENTATIONS

5.1 **Warranties and Representations.** As a material inducement to Lender's extension of credit to Borrower in connection with the Loan, Borrower warrants and represents to Lender as follows:

(a) **Qualifications.** Borrower is qualified to do business in the jurisdiction in which the Property is located.

(b) **Litigation.** To the best of Borrower's knowledge, there are no actions, suits, proceedings or investigations pending or threatened against or affecting Borrower or the Property in any court or before any other Governmental Authorities that could reasonably be expected to have a material adverse effect on Borrower's ability to repay the Loan or on the value of the Property, nor does Borrower know of any basis for any such action, suit, proceeding or investigation.

(c) **Ownership.** Upon recordation of this Deed of Trust, Borrower will be the sole legal and beneficial owner of, and will have good and marketable title to, the Property and all other collateral which is the subject of the Loan Documents.

(d) **Liens.** To the best of Borrower's knowledge, there are no Liens, claims, encroachments, Covenants and Restrictions, Leases, Easements, or other rights affecting the Property which would not be disclosed by a customary search of the records relating to the Land of the county recorder for the county in which the Property

is located, except for such matters as have been specifically disclosed by Borrower to and approved in writing by Lender prior to the date of recordation of this Deed of Trust.

(e) **Condition.** Upon completion of the Project (as defined on the Construction Loan Rider attached hereto), the Property will be in good condition and repair without any material defects known to Borrower.

(f) **Property Compliance.** Upon completion of the Project, the Property will be in compliance with all Governmental Requirements in all material respects.

(g) **Borrower Compliance.** Borrower shall comply with all Governmental Requirements, except to the extent that failure to comply therewith would not have a material adverse effect on its ability to fulfill its Obligations or otherwise fully comply with the Loan Documents.

(h) **Damage.** Except for any damage to be repaired by the Project, the Property is free from material casualty or termite damage.

(i) **Condemnation.** To the best of Borrower's knowledge, there is no condemnation, zoning change, or other proceeding or action pending, threatened or contemplated by any Governmental Authority which would in any way affect the Property.

(j) **Commercial Loan.** Borrower represents and warrants that the proceeds of this loan will be used by Borrower only for business purposes. If Borrower is a natural person, Borrower represents and warrants that Borrower does not intend to, and will not, occupy or reside on the Property so long as the Loan remains outstanding. If Borrower is a legal entity, Borrower represents and warrants that no person affiliated with Borrower intends to or will occupy or reside on the Property so long as the Loan remains outstanding.

(k) **Arms-Length Transaction.** Borrower represents and warrants that Borrower is operating at arms-length with, and has no material interest in, all parties to the Loan transaction, including the seller(s), any assignor(s) of the purchase and sale agreement for the Property, any loan broker or real estate agent(s), settling agent(s), escrow and title companies, insurance agent(s) or companies, or others, except for any relationship Borrower has disclosed to Lender and which Lender has approved in writing.

5.2 **Continuing Warranties and Representations.** The warranties and representations contained in this Article 5 shall be true and correct as of the date of recordation of this Deed of Trust, shall survive the closing of the Loan, and shall remain true and correct as of the date on which such warranties and representations are given.

ARTICLE 6

MISCELLANEOUS

6.1 **Lender Statement; Certain Charges.** With respect to (a) any statement, accounting, or similar information requested by Borrower or any other Person; or (b) any other document furnished to Borrower or any other Person by Lender at Borrower's request, Lender shall have the right to charge the maximum amount then permitted by law or, if there is no such maximum, Lender's customary charge for providing such statement, accounting, or other information. Borrower shall pay Lender its customary charge for any other service rendered by Lender in connection with the Loan or the Property, including the issuance of a request for full or partial reconveyance of this Deed of Trust, transmitting Loan proceeds to an escrow holder and changing Lender's records relating to the Obligations.

6.2 **Reconveyance.** Upon (a) Lender's written request stating that all Obligations secured by this Deed of Trust have been paid or performed in full; (b) surrender to Trustee of this Deed of Trust, the Note and all other documents evidencing the indebtedness secured by this Deed of Trust; and (c) payment of Trustee's fees and expenses of this trust, Trustee shall reconvey the Property then held under this Deed of Trust without warranty of any kind. The

recitals in the reconveyance of any matters or facts shall be conclusive proof of their truthfulness. The grantee in such reconveyance may be described as the "person or persons legally entitled thereto". Such reconveyance shall operate as a reassignment of the Rents and Profits assigned to Lender under this Deed of Trust. Unless Trustee is directed by Lender to retain such documents for a longer period of time, Trustee may destroy this Deed of Trust and the Note five (5) years after issuance of the full reconveyance; provided, however, that Trustee, in its sole discretion, may deliver this Deed of Trust and the Note after full reconveyance to the Person or Persons legally entitled thereto.

6.3 Substitution of Trustee. Lender, at its option, shall have the right from time to time to appoint a successor trustee to any trustee appointed under this Deed of Trust by Lender's execution and acknowledgment of a written instrument which is recorded in the office of the recorder of each county in which the Property is located. The recordation of such an instrument in accordance with this Section shall constitute conclusive proof of the proper substitution of a successor trustee under this Deed of Trust. Upon recordation of such an instrument, the successor trustee shall succeed to all the title, power and duties granted to the Trustee under this Deed of Trust and by applicable law without conveyance of the Property. Such instrument shall contain the name of the original Lender, Trustee and Borrower named in this Deed of Trust, the book and page or other recording information for this Deed of Trust, and the name and address of the successor trustee. If a notice of default has been recorded prior to the recordation of a substitution of trustee, the power of substitution shall not be exercised by Lender until the costs, fees and expenses of the acting trustee have been paid in full and the acting trustee has endorsed acknowledgment of receipt of such amounts on the instrument substituting the successor trustee. Without limiting the terms of this Section, Lender shall have the right from time to time to substitute a successor to any trustee appointed under this Deed of Trust in accordance with any statutory or other procedure allowed by law for such substitution.

6.4 Execution of Instruments by Lender and Trustee. Without notice to or affecting the liability of Borrower or any other Person for the payment or performance of the Obligations, without affecting the lien or priority of this Deed of Trust or Lender's rights and remedies under the Loan Documents, and without liability to Borrower or any other Person, Lender and Trustee (if Trustee is so requested in writing by Lender) shall have the right, at any time and from time to time, to do any one or more of the following: (a) reconvey any part of the Property; (b) consent in writing to the making of any map or plat relating to the Property; (c) join in or consent to the granting of any Easement affecting the Property; and (d) execute any extension agreement relating to any or all of the Obligations, any document subordinating the lien of this Deed of Trust to any other Lien or document, or any other document relating to the Property, Obligations, or Loan Documents.

6.5 Trust Irrevocable; Acceptance by Trustee. The trust created by this Deed of Trust is irrevocable by Borrower. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is recorded in the county in which the Property is located as provided by law. Trustee is not obligated to notify any party of a pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender or the Trustee shall be a party unless brought by the Trustee.

6.6 Late Charges. If any installment payment under the Note is not paid when due, Borrower shall pay any late charge provided for in the Note.

6.7 Requests by Borrower for Approvals by Lender. All requests by Borrower for Lender's consent to or approval of any transaction or matter requiring Lender's consent or approval under the Loan Documents (a) shall be made by Borrower in writing (inclusive of electronic delivery); (b) shall specifically describe the transaction or matter with respect to which Lender's consent or approval is requested; (c) shall be accompanied by such information and documentation as Lender may require in connection with such request; and (d) shall be delivered to Lender not less than fifteen (15) days before Borrower proposes to take the action or effect the transaction with respect to which Lender's consent or approval is requested, unless a different period of time is expressly provided for in the Loan Documents.

6.8 Approvals by Lender. Whenever (a) the terms of the Loan Documents grant Lender the right to consent to or approve any transaction or matter; (b) Lender is authorized or empowered under the Loan Documents to

make a determination with respect to any transaction or matter; or (c) the Loan Documents provide that any document or other item must be approved by or acceptable to Lender. then except as otherwise expressly provided in the Loan Documents, (i) Lender shall have the right to grant or withhold such approval or consent and make such determination in its sole and absolute discretion; and (ii) the form and substance of such document or other item must be satisfactory to Lender in its sole and absolute discretion. Whenever the terms of the Loan Documents require Lender's consent to or approval of any transaction, matter, or document, such consent or approval shall not be deemed to be effective unless it is set forth in a written instrument executed by Lender.

6.9 Transfers by Borrower Without Lender's Consent; No Release of Borrower. The following provisions shall apply if Borrower sells the Property to a third Person either (i) without Lender's consent; or (ii) with Lender's consent in a transaction in which Borrower is not released from liability under the Loan Documents:

(a) **No Release of Borrower.** No such action by Borrower nor any assumption of any or all of the Obligations by any transferee of the Property ("Transferee") shall be deemed to release Borrower or any other Person, including Guarantor, from any liability under the terms of the Loan Documents, and Borrower and such Persons shall remain liable to Lender for the payment and performance of all of their respective obligations under the Loan Documents.

(b) **Actions Without Borrower's Consent.** Borrower agrees that Lender may do any one or all of the following without notice to or the consent of Borrower and without affecting Lender's rights or remedies against Borrower: (i) accelerate, accept partial payment of, compromise, settle, renew, extend the time for payment or performance of, or refuse to enforce any of Borrower's Obligations to Lender under or in connection with this Deed of Trust or any of the other Loan Documents; (ii) grant any indulgence or forbearance to the Transferee or any other Person under or in connection with any or all of the Loan Documents; (iii) release, waive, substitute or add any or all collateral securing payment of any or all of the Obligations; (iv) release, substitute or add any one or more endorsers or guarantors of any or all of the Obligations; (v) amend, supplement, alter or change in any respect whatsoever any term or provision of the Loan Documents or any other agreement relating to the Obligations; and (vi) exercise any right or remedy with respect to the Obligations or any collateral securing the Obligations, notwithstanding any effect on or impairment of Borrower's subrogation, reimbursement or other rights against the Transferee.

(c) **Waivers.** Borrower waives all rights which it may have (i) to require Lender to exhaust its rights and remedies against the Transferee, any other Person, or any collateral securing any or all of the Obligations before pursuing its rights and remedies against Borrower; (ii) to require Lender to exercise any right or power or to pursue any remedy which Lender may have under the Loan Documents or applicable law before pursuing its rights and remedies against Borrower; and (iii) to assert any defense to Lender's enforcement of its rights and remedies against Borrower based on an election of remedies by Lender or the manner in which Lender exercises any remedy which destroys, diminishes or interferes with any or all of Borrower's subrogation, reimbursement or other rights against the Transferee.

6.10 Defense of Actions and Protection of Security by Lender. Whether or not an Event of Default has occurred, Lender and Trustee shall each have the right, but not the obligation, to appear in and defend any action or proceeding, whether commenced by or against Borrower, any of the Guarantors, or any other Person, which affects or which Lender or Trustee determines may affect any or all of the following: (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Lender's, Trustee's, or Borrower's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Lender by reason of its interest in the Property. Lender and Trustee shall each have the right, but not the obligation, to commence and prosecute any action or proceeding which Lender or Trustee determines to be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims, or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property Proceeds pursuant to this Deed of Trust; (iii) preserve, protect, maintain, and defend the Property and Lender's lien thereon; or (iv) enforce or exercise any right, remedy or power available to or conferred on Lender or Trustee under the Loan Documents or applicable law. Lender and Trustee shall each have the

right to discontinue, suspend or dismiss any such action or proceeding which has been commenced by Lender or Trustee at any time.

6.11 Expenses. Lender shall have the right to incur and pay all costs, fees, expenses, and liabilities that Lender determines to be necessary or appropriate in connection with any or all of the following matters (the "Reimbursable Costs"): (a) the exercise of any or all of Lender's rights and remedies under the Loan Documents; (b) the enforcement of any or all of the Obligations or any other obligation of any Person liable to Lender in connection with the Loan, whether or not any legal action or proceeding is commenced by Lender; (c) the preservation, protection, maintenance, or defense of the Property or Lender's lien thereon; (d) the sale or disposition of the Property or any other collateral securing any or all of the Obligations; (e) the defense of any action or proceeding commenced by Borrower or Guarantor; or (f) the commencement and prosecution of any action or proceeding by Lender or Trustee with respect to any or all of the matters described in this Section or in Section 6.10 above, including an action for relief from any stay, injunction, or similar order or enactment arising under any federal or state bankruptcy, insolvency or similar law. Without limiting the terms of this Section, Lender shall have the right to do any or all of the following in connection with any of the matters described in this Section, and all costs, fees, expenses, and liabilities incurred or paid in connection therewith shall constitute Reimbursable Costs: (1) select, retain, and consult with attorneys, accountants, appraisers, contractors, brokers, architects, engineers and such other experts, consultants, advisors and third Persons as Lender determines to be necessary or appropriate; (2) settle, purchase, compromise or pay any or all claims, demands, and Liens; and (3) obtain any trustee's sale guaranty or other title insurance coverage relating to the Property which Lender determines to be necessary or appropriate.

6.12 Taxes Imposed on Lender. If, after the date of this Deed of Trust, any Governmental Requirements are enacted for the purpose of taxing any lien on the Property or changing in any way the laws for the taxation of deeds of trust or debts secured by deeds of trust, so as to impose on Lender payment of all or part of any Taxes assessed against the Property, then prior to the due date of such Taxes, Borrower shall pay all such Taxes and agree to pay such Taxes when levied or assessed against the Property or Lender.

6.13 Payment of Advances by Borrower. All Reimbursable Costs and all other costs, fees, expenses and liabilities incurred or paid by Lender under any other provision of the Loan Documents or under applicable law in connection with the Obligations or the Property (a) shall be payable by Borrower to Lender on Lender's demand; (b) shall constitute additional indebtedness of Borrower to Lender; (c) shall be secured by this Deed of Trust; and (d) shall bear interest from the date of expenditure at the rate of interest applicable to principal under the Note. Nothing contained in this Deed of Trust shall be deemed to obligate Lender (i) to incur any costs, fees, expenses, or liabilities; (ii) to make any appearances in or defend any action or proceeding; or (iii) to commence or prosecute any action or proceeding relating to any matter.

6.14 No Third Party Beneficiaries. The Loan Documents are entered into for the sole protection and benefit of Lender, Borrower and Trustee and their respective permitted successors and assigns. No other Person shall have any rights or causes of action under the Loan Documents.

6.15 Notices. All notices and demands by Lender to Borrower under this Deed of Trust and the other Loan Documents shall be in writing and shall be effective on the earliest of (a) personal delivery to Borrower; (b) electronic delivery to Borrower addressed to Borrower at the e-mail address set forth in this Deed of Trust (c) two (2) days after deposit in first-class or certified United States mail, postage prepaid, addressed to Borrower at the address set forth in this Deed of Trust; and (d) one (1) business day after deposit with a reputable nationally recognized overnight delivery service, delivery charges prepaid, addressed to Borrower at the address set forth in this Deed of Trust; provided, however, that notwithstanding anything to the contrary contained in this Section, service of any notice of default or notice of sale provided or required by law shall, if mailed, be deemed effective on the date of mailing. All notices and demands by Borrower to Lender under this Deed of Trust shall be in writing and shall be effective on actual receipt by Lender at Lender's address set forth in this Deed of Trust; provided, however, that nonreceipt of any such notice or demand by Lender as a result of Lender's refusal to accept delivery or Lender's failure to notify Borrower of Lender's change of address shall be deemed receipt by Lender. Borrower's and Lender's respective

addresses set forth in this Deed of Trust may be changed by written notice given to the other party in accordance with this Section. If Borrower consists of more than one Person, service of any notice or demand on any one of such Persons by Lender shall be effective service on Borrower for all purposes.

6.16 Performance of Covenants. Borrower shall perform and comply with all of its obligations under this Deed of Trust at Borrower's sole cost and expense.

6.17 Severability; Savings Clause. If any provision of the Loan Documents shall be held by any court of competent jurisdiction to be unlawful, voidable, void, or unenforceable for any reason, such provision shall be deemed to be severable from and shall in no way affect the validity or enforceability of the remaining provisions of the Loan Documents. Notwithstanding anything to the contrary contained in the Note or any of the other Loan Documents, the interest and other amounts paid or agreed to be paid to the Lender in consideration of the Loan evidenced by the Note (such interest and other amounts are referred to collectively as "Interest") shall not exceed the maximum rate permitted under applicable usury laws. If, for any reason, the Interest exceeds the maximum rate permitted under applicable usury laws, then (a) all excess Interest amounts previously collected by the Lender shall be credited against the principal balance of the Note or, at the Lender's option, to any other principal indebtedness of Borrower to Lender arising out of the Loan evidenced by the Note; (b) if the Note and all such other indebtedness have been paid in full, such excess amounts shall be refunded by the Lender to Borrower; and (c) the provisions of the Note shall automatically be deemed to be reformed and the amount of Interest payable hereunder shall automatically be deemed to be reduced, without the execution of any further documents by Borrower or Lender, so as to provide for the payment of Interest in an amount equal to, but not exceeding, the maximum rate permitted under applicable usury laws. All consideration paid to Lender which constitutes Interest under applicable usury laws shall be amortized, prorated, allocated, or otherwise apportioned throughout the term of the Note so that, to the extent possible, the rate of interest on the principal amount of the Note does not exceed the maximum rate permitted under applicable usury laws.

6.18 Interpretation. Whenever the context of the Loan Documents reasonably requires, all words used in the singular shall be deemed to have been used in the plural, and the neuter gender shall be deemed to include the masculine and feminine gender, and vice versa. For purposes of this Deed of Trust, all references to the Property or Improvements shall be deemed to refer to all or any part of the Property or Improvements, respectively. The headings to sections of this Deed of Trust are for convenient reference only, and they do not in any way define or limit any of the terms of this Deed of Trust and shall not be used in interpreting this Deed of Trust.

6.19 Time of the Essence. Time is of the essence in the performance of each provision of the Loan Documents by Borrower.

6.20 Amendments. The Loan Documents (excluding the Guaranty) may be modified only by written agreement signed by Lender and Borrower.

6.21 Entire Agreement. The Loan Documents contain the entire agreement concerning the subject matter of the Loan Documents and supersede all prior and contemporaneous negotiations, agreements, statements, understandings, terms, conditions, representations and warranties, whether oral or written, between Lender and Borrower concerning the Loan which are the subject matter of the Loan Documents.

6.22 No Waiver by Lender. No waiver by Lender of any of its rights or remedies in connection with the Obligations or of any of the terms or conditions of the Loan Documents shall be effective unless such waiver is in writing and signed by Lender. Without limiting the generality of this Section, (a) no delay or omission by Lender in exercising any of its rights or remedies in connection with the Obligations shall constitute or be construed as a waiver of such rights or remedies; (b) no waiver by Lender of any default by Borrower under the Loan Documents or consent by Lender to any act or omission by Borrower shall constitute or be construed as a waiver of or consent to any other or subsequent default, act or omission by Borrower; (c) no acceptance by Lender of any late payment or late or defective performance of any of the Obligations by Borrower shall constitute a waiver by Lender of the right to require

prompt payment and performance strictly in accordance with the Loan Documents with respect to any other payment or performance of any of the Obligations; (d) no acceptance by Lender of any payment or performance following any notice of default which has been given or recorded by Lender shall constitute a waiver of Lender's right to proceed with the exercise of its remedies with respect to any Obligations which have not been paid or performed in full; (e) no acceptance by Lender of any partial payment or performance shall constitute a waiver by Lender of any of its rights or remedies relating to any Obligations which have not been paid or performed in full; and (f) no application of Rents and Profits, Insurance Proceeds, Condemnation Proceeds or Property Proceeds to any of the Obligations shall constitute or be construed as a waiver by Lender or cure of any Event of Default or impair, prejudice, invalidate or otherwise affect any action by Lender or Trustee in response to such default.

6.23 Waivers by Borrower. Borrower waives presentment, demand for payment, protest, notice of demand, dishonor, protest and non-payment, and all other notices and demands in connection with the delivery, acceptance, performance, default under, and enforcement of the Loan Documents. Borrower waives the right to assert any statute of limitations as a defense to the enforcement of any or all of the Loan Documents to the fullest extent permitted by law. Without limiting the generality of the immediately preceding sentence, in the event of Borrower's payment in partial satisfaction of any or all of the Obligations, Lender shall have the sole and exclusive right and authority to designate the portion of the Obligations that is to be satisfied.

6.24 Waiver of Marshalling. Borrower and all Persons holding a Lien affecting the Property who have actual or constructive notice of this Deed of Trust waive (a) all rights to require marshalling of assets or liens in the event of Lender's exercise of any of its rights and remedies under this Deed of Trust, including any judicial or nonjudicial foreclosure sale of the Property; (b) all rights to require Lender to exhaust its rights and remedies against any other collateral securing any or all of the Obligations before pursuing its rights and remedies under this Deed of Trust; and (c) all rights to require Lender to exercise any other right or power or to pursue any other remedy which Lender may have under any document or applicable law before pursuing its rights and remedies under this Deed of Trust.

6.25 Waiver of Subrogation. Borrower waives all rights to recover against Lender for any loss or damage incurred by Borrower from any cause which is insured under any of the Insurance Policies, except that the foregoing waiver of subrogation shall not be effective with respect to any Insurance Policy if the coverage under such policy would be materially reduced or impaired as a result of such waiver. Borrower shall use its best efforts to obtain Insurance Policies which permit the waiver of subrogation contained in this Section.

6.26 Cumulative Remedies. No right or remedy of Lender or Trustee under this Deed of Trust or the other Loan Documents shall be exclusive of any other right or remedy under the Loan Documents or to which Lender or Trustee may be entitled. Lender's rights and remedies under the Loan Documents are cumulative and in addition to all other rights and remedies which Lender may have under any other document with Borrower and under applicable law. Lender shall have the right to exercise any one or more of its rights and remedies in connection with the Obligations at Lender's option and in its sole and absolute discretion, without notice to Borrower or any other Person (except as otherwise expressly required by law or under the Loan Documents), and in such order as Lender may determine in its sole and absolute discretion. If Lender holds any collateral in addition to the Property for any of the Obligations, Lender, at its option, shall have the right to pursue its rights or remedies with respect to such other collateral either before, contemporaneously with, or after Lender's exercise of its rights or remedies with respect to the Property. Upon the occurrence of an Event of Default, Lender, at its option, shall have the right to offset against any debt or monies due from Lender to Borrower against all or part of the Obligations.

6.27 Subrogation to Lien Rights. If any or all of the proceeds of the Note are directly or indirectly used to pay any outstanding Lien against the Property, or if Lender pays or discharges any Lien pursuant to any of the terms of the Loan Documents or under applicable law, Lender shall be subrogated to all rights and liens held by the holder of such Lien, regardless of whether such Lien is reconveyed.

6.28 Joint and Several Liability. Each Person signing this Deed of Trust as Borrower shall be jointly and severally liable to Lender for the performance of Borrower's obligations under the Loan Documents. If Borrower consists of more than one Person, the occurrence of any Event of Default with respect to any one or more of such Persons shall constitute an Event of Default and entitle Lender to exercise its rights and remedies under Article 4 of this Deed of Trust.

6.29 Sale of Loan Documents. Lender shall have the right to do any or all of the following at any time without prior notice to or the consent of Borrower or any other Person: (a) to sell, transfer, pledge or assign any or all of Loan Documents, or any or all servicing rights with respect thereto; (b) to sell, transfer, pledge or assign participations in the Loan Documents ("**Participations**"); and (c) to issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "**Securities**"). Lender is authorized to forward or disclose to each purchaser, transferee, pledgee, assignee, servicer, participant, or investor in such Participations or Securities (collectively, the "**Investor**") or any Rating Agency rating such Securities, each prospective Investor, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan and to Borrower or any Guarantor as Lender determines to be necessary or desirable. Upon Lender's request, Borrower shall reasonably cooperate with Lender in connection with any of the transactions contemplated by this Section. Notwithstanding anything to the contrary contained in this Deed of Trust or any of the other Loan Documents, from and after the date of any sale, transfer or assignment of the Note and other Loan Documents by Lender or upon any realization of a pledge by a pledgee, the cross-default provision contained in Section 3.15 of this Deed of Trust shall terminate and shall be of no further force or effect.

6.30 Applicable Law; Jurisdiction; Venue. The Loan Documents shall be governed by and construed under the laws of the state of California (without giving effect to any state's conflict of law principles), except that the exercise of remedies against the Property shall be governed by the laws of the state in which the Property is located. All payments made pursuant to the Loan Documents are to be made to the Lender in California in which state the last act occurred to make the Note effective between the parties. Borrower agrees that the courts of the State of California and Federal District Courts located in San Francisco County, California, shall have exclusive jurisdiction and venue of any action or proceeding directly or indirectly arising out of or related to the negotiation, execution, delivery, performance, breach, enforcement or interpretation of the Loan Documents (except for foreclosure proceedings, which shall proceed in the state in which the Property is located and according to the laws of that state), regardless of how any claim, counterclaim or defense in any such action or proceeding is characterized. Borrower irrevocably consents to the personal jurisdiction and venue of such courts, and to the service of process in the manner provided for the giving of notices in this Deed of Trust. Borrower waives all objections to such jurisdiction and venue, including all objections that are based upon inconvenience or the nature of the forum.

6.31 Successors. Subject to the restrictions contained in the Loan Documents, the Loan Documents shall be binding upon and inure to the benefit of Lender and Borrower and their respective permitted successors and assigns.

6.32 Power of Attorney. Borrower irrevocably appoints Lender, with full power of substitution, as Borrower's attorney-in-fact, coupled with an interest, with full power, in Lender's own name or in the name of Borrower to take any or all of the actions specified in Article 4 above with respect to the Property. Lender shall have the right to exercise the power of attorney granted in this Section directly or to delegate all or part of such power to one or more agents of Lender. Nothing contained in this Deed of Trust shall be construed to obligate Lender to act on behalf of Borrower as attorney-in-fact.


6.33 Indemnification. Borrower shall indemnify and hold Lender and its officers, directors, agents, employees, representatives, shareholders, affiliates, successors and assigns (collectively, the "**Indemnified Parties**") harmless from and against any and all claims, demands, damages, liabilities, actions, causes of action, suits, costs, and expenses, including attorneys' fees and costs, arising directly or indirectly out of or relating to any or all of the following: (a) Borrower's breach of any of its Obligations or warranties under the Loan Documents; (b) any act or

omission by Borrower; (c) any act or omission by a contractor, architect or any other Person providing labor, services, materials or equipment in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property; (d) Borrower's use and occupancy of the Property or any other activity or thing allowed or suffered by Borrower to be done on or about the Property; (e) any claims for commissions, finder's fees or brokerage fees arising out of the Loan or the transactions contemplated by the Loan Documents; and (f) Lender's exercise of any or all of Lender's rights or remedies under the Loan Documents in accordance with the terms thereof, except in the case of negligence or intentional tortious conduct of such Indemnified Party which such Indemnified Party is determined by the final judgment of a court of competent jurisdiction to have committed.

6.34 State Specific Provisions. State specific provisions are outlined on Exhibit B (if applicable), attached hereto and incorporated herein.

IN WITNESS WHEREOF, Borrower has caused this Deed of Trust to be executed as of the day and year first written above.

BORROWER: Fritz & Fern Holdings LLC, A Wyoming Limited Liability Company



By: Kayla Fritz, Manager

NOTE: ALL FOREGOING SIGNATURES ON THIS INSTRUMENT MUST BE NOTARIZED

INDIVIDUAL ACKNOWLEDGMENT

State/Commonwealth of Virginia
County of Virginia Beach City } ss.

On this the 9th day of November, 2023, before me,
Day Month Year

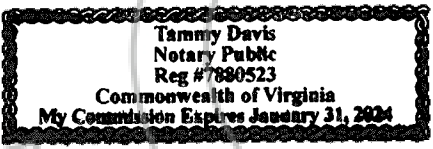
Tammy Davis, the undersigned Notary Public,
Name of Notary Public

personally appeared Kayla Fritz
Name(s) of Signer(s)

- personally known to me – OR –
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein stated.

WITNESS my hand and official seal.



Place Notary Seal/Stamp Above

Tammy Davis
Signature of Notary Public

My Commission Expires: 01/31/2024

7880523
Any Other Required Information
(Printed Name of Notary, Expiration Date, etc.)

OPTIONAL

This section is required for notarizations performed in Arizona but is optional in other states. Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Deed of Trust, Assignment of Rents and Fixture Filing
Document Date: 11/8/2023 Number of Pages: - 26 -
Signer(s) Other Than Named Above: None

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made on 11-08-2023, and is incorporated into and shall be deemed to amend and supplement the Mortgage or Deed of Trust (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Promissory Note Secured by Security Instrument to Kiavi Funding, Inc., a Delaware Corporation (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

701 GARY LANE UNIT A, STATELINE, NV, 89449, USA

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in:

CC&R'S

(the "Declaration"). The Property is a part of a planned unit development known as:

Summit Village Homeowners Association

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to ensure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to

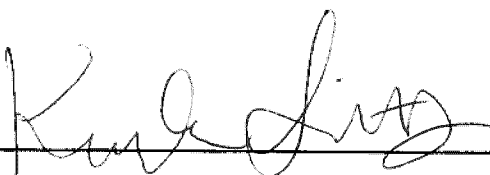
Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

Borrower: Fritz & Fern Holdings LLC, A Wyoming Limited Liability Company



By: Kayla Fritz, Manager

CONSTRUCTION LOAN RIDER TO SECURITY INSTRUMENT

This Construction Loan Rider is attached to and made a part of the Deed of Trust, Mortgage, or Security Deed (the "Security Instrument") including an Assignment of Rents, and Fixture Filing dated 11-08-2023 executed by:

Fritz & Fern Holdings LLC, A Wyoming Limited Liability Company
("Borrower"), for the benefit of Kiavi Funding, Inc., a Delaware corporation ("Lender"), and encumbering the property described in the Security Instrument.

WHEREAS, Borrower desires to finance the construction of certain improvements to the Property and Borrower and Lender desire to establish certain terms and conditions relating to the disbursement of proceeds of the Construction Loan for such construction.

WHEREAS, all references to the word "Loan" in the Security Instrument should include this Construction Loan.

NOW, THEREFORE, for valuable consideration, the Security Instrument is amended by adding the following Article 7:

ARTICLE 7

CONSTRUCTION PROVISIONS

7.1 **Additional Definitions.** For purposes of this Security Instrument, the following terms shall have the following definitions:

(a) **Completion Date.** "Completion Date" means the date by which Borrower shall complete construction of the Project which must occur within (i) (x) ninety (90) days after the Initial Advance for loans with an original six (6) month term, or (y) one hundred eighty (180) days after the Initial Advance for loans with an original twelve (12) month term, as the case may be, or (ii) the Reserve Advance Termination Date (as defined in the Note), whichever is later.

(b) **Construction Loan.** "Construction Loan" means the total amount of the Reserve Advance identified in Schedule A to the Note.

(c) **Contractor.** "Contractor" means the licensed (if licensure is required by applicable law) general contractor or contractors who have been retained by Borrower to construct the Project. Contractors must be approved by Lender. As used herein, and if so approved by Lender, "Contractor" may be Borrower, in which case Borrower must be licensed as a general contractor if licensing is required under applicable law. A Contractor may be required by Lender on any Project in Lender's sole discretion and any change of Contractor must be approved by Lender.

(d) **Project.** "Project" means the improvements that Borrower proposes to construct on the Land as described in the Scope of Work.

(e) **Scope of Work.** "Scope of Work" means a document completed on Lender's required form setting forth the final plans and specifications for the Project, describing in reasonable detail the improvements to be performed and/or construction on the Land, that has been approved by Lender. Any changes to the anticipated construction to the Land must be documented in an amendment of the Scope of Work, or change order, agreed to in

writing by Lender. Lender will not disburse Construction Loan Proceeds for materials or labor costs inconsistent with the Scope of Work.

7.2 Disbursement of Construction Loan Proceeds. Lender agrees to disburse Construction Loan proceeds to Borrower during the period from the date of recordation of this Security Instrument up to but not including the Reserve Advance Termination Date (as defined in the Note) in the aggregate principal amount not to exceed at any time the amount of the Construction Loan under the following terms and conditions:

(a) **Use of Construction Loan Proceeds.** All Construction Loan proceeds disbursed to Borrower shall be in reimbursement of the costs of labor, material, equipment and services already incurred and paid for in full by Borrower. Borrower shall not use any portion of the Construction Loan proceeds to make any interest payment on the Loan or on any other outstanding loan(s) from or serviced by Lender.

(b) **Disbursement Requests.** From time to time during the course of construction of the Project, Borrower shall submit to Lender requests for reimbursement from the Reserve Advance (each a "Disbursement Request"). Each Disbursement Request shall be satisfactory to Lender in form and substance and must be accompanied by payment of any applicable fee charged by Lender for disbursement processing, release, or administration of the Disbursement Request. Lender may request additional documentation showing the cost of, and documenting previous payment in full by the Borrower for, those items of labor, services, materials, and equipment that have been performed on, or incorporated in, or delivered to, the Project, together with, if applicable, the pro rata portion of any contractor's fee, overhead, or general conditions attributable to such labor, services, materials, and equipment. At Lender's sole and absolute discretion, Lender may request any or all of the following in connection with a Disbursement Request: a disbursement request form that (i) shall be in the form of an itemized statement, signed and certified as being true and correct by Borrower; (ii) shall be signed and certified as being true and correct by the contractor who completed the work or delivered the services, materials or equipment identified in the Disbursement Request; (iii) shall be accompanied by a true and correct copy of the bills and itemized receipts and invoices setting forth in reasonable detail the costs of labor, services, materials, and equipment used or performed which are the subject of the Disbursement Request (collectively, the "Invoices"); (iv) shall be accompanied by a true and correct copy of all receipts demonstrating payment, cancelled checks or other proof of payment in full of the Invoices by the Borrower, in form and substance satisfactory to Lender in Lender's sole discretion; (v) shall be accompanied by photographic evidence substantiating the work performed; (vi) shall be accompanied by recorded video evidence substantiating the work performed; (vii) shall be accompanied by a lien waiver and release in form and substance satisfactory to Lender upon progress payment in the form required by the laws of the state in which the Property is located executed by each party whose Invoice was satisfied by the payments being reimbursed by the Disbursement Request; and (ix) shall be accompanied by such title insurance endorsements or other information as may be required by Lender to ensure the first priority of this Security Instrument insofar as it secures such disbursement. All of the items and documentation requested in connection with any Disbursement Request shall be considered a part of such Disbursement Request. For each Disbursement Request submitted to Lender, Borrower shall pay to Lender an administrative fee; provided that Lender shall have no obligation to approve any Disbursement Request that does not comply with this Section; provided further that Lender has the right to limit the total number of Disbursement Requests submitted by Borrower. Lender retains the right, in its sole and absolute discretion, to cancel the entire outstanding amount of the Construction Loan, for unsatisfactory work, as determined in its sole and absolute discretion, performed in connection with any Disbursement Request.

(c) **Disbursements.** Lender shall disburse funds directly to Borrower in the amount shown in the approved Disbursement Request (subject to clause (d) below) upon Lender's verification of the accuracy of each Disbursement Request based on Lender's inspection of the Project and/or Lender's review of the substantiating documentation. Lender may, in its sole discretion, refrain from disbursing any amounts up to the Final Disbursement Amount in accordance with clause (d) below. Notwithstanding anything in the foregoing, Lender shall not have any obligation to disburse any funds, including but not limited to the final disbursement, if the work performed or materials acquired are outside the scope of the Scope of Work, or Borrower is in default under the Loan Documents in any way.

(d) **Final Disbursement.** Notwithstanding anything herein to the contrary, and only unless Lender agrees in writing otherwise, the final disbursement shall be made at the successful completion of the Project, consistent with the Scope of Work, and pursuant to a final Disbursement Request by Borrower. The final disbursement

shall be in an amount equal to at least 10% or 25% of the Construction Loan proceeds, as set by Lender (the "Final Disbursement Amount"). The Final Disbursement Amount will be retained by Lender in the Reserve Account until completion of the Project and satisfaction of the conditions set forth below. Disbursements requested prior to the final Disbursement Request shall be paid only up to the aggregate amount necessary to leave the Final Disbursement Amount in the Reserve Account. Unless satisfaction is waived in writing by Lender, Lender shall approve and honor the final Disbursement Request upon satisfaction of all conditions to disbursements set forth in Section 7.2(b) above, and Lender's receipt and approval of the following: (i) a permanent and unconditional certificate of occupancy for the Project issued by the appropriate Governmental Authority, together with copies of all other Governmental Permits which may be required in order to allow occupancy of the Project; (ii) evidence that the Project has been completed in accordance with the Scope of Work and all other requirements of the Loan Documents have been satisfied; (iii) final waivers of lien executed by each laborer, materialman or contractor who may file a lien against the Property in connection with the Project in the form required by the laws of the state in which the Property is located; (iv) if applicable, such other assurances as may be necessary to satisfy the requirements of Lender's title insurer with respect to the issuance of, or the rewrite or reissuance of the ALTA lender's policy of title insurance to Lender, and (v) documents or information needed to satisfy any additional conditions Lender may impose in its sole and absolute discretion.

(e) **Borrower Certification.** With respect to each Disbursement Request that Borrower submits, Borrower shall be deemed conclusively to have certified to Lender that (i) the items of labor, services, materials, and equipment shown in the Disbursement Request have been performed on, supplied to, or installed in the Project in conformance with the Scope of Work and all Governmental Permits; (ii) the costs of labor, services, materials, and equipment shown in the Disbursement Request were commercially reasonable, and (iii) the cost of all items of labor, services, materials, and equipment shown in the Disbursement Request were fully paid by Borrower prior to the Disbursement Request. Borrower shall be deemed to have made the certification described in this Section with respect to each Disbursement Request received by Lender, notwithstanding Borrower's failure to sign such Disbursement Request.

(f) **Reliance by Lender.** Lender may conclusively presume that all Disbursement Requests, statements, information, certifications, and representations, whether written, oral or electronic, submitted or made by Borrower, Contractor, or any of the other parties involved in the Project, or any of their respective agents, to Lender in connection with the Construction Loan are true and correct, and Lender shall be entitled to rely thereon, without investigation or inquiry of any kind by Lender, in advancing the Construction Loan proceeds and taking or refraining from taking any other action in connection with the Construction Loan.

(g) **No Default.** To receive disbursement of any Construction Loan proceeds, Borrower must not be in default under the Loan Documents or under any monthly payment grace period for this Loan or any other loan made or serviced by Lender.

7.3 Construction Covenants. Borrower covenants and agrees to comply with each of the following terms and conditions:

(a) **Approval of Scope of Work, Permits and Notices.** Borrower shall deliver to Lender for Lender's approval complete and accurate copies of the following documents upon Borrower's receipt thereof: (i) Scope of Work and any material modifications thereto; (ii) Construction Contracts and any material modifications thereto; (iii) Governmental Permits related to the Project; (iv) and all material notices, requests, and demands received by Borrower from any Governmental Authority, architect, contractor, subcontractor or engineer related to the Project.

(b) **Commencement of Construction.** After recordation of this Security Instrument and Lender's approval of the Scope of Work and other documents described in Section 7.3(a) herein, Borrower shall commence construction of the Project and shall thereafter diligently prosecute construction in a good and workmanlike manner in accordance with the Scope of Work. For the avoidance of doubt, Borrower shall not commence any construction activity prior to the date of recordation of this Security Instrument which may result in any mechanic's lien or similar lien gaining priority over the lien of this Security Instrument, unless arrangements acceptable to Lender have been made by Borrower for the issuance of a title insurance policy to Lender which satisfies the requirements of

this Security Instrument. Disbursement Requests related to labor or services performed, or materials or equipment delivered, prior to the date of recordation of the Security Instrument will not be honored.

(c) **Completion of Construction.** Borrower shall complete construction of the Project, consistent with the Scope of Work, on or before the Completion Date. For purposes of this Section, the Project shall be deemed to be completed when (i) the conditions for the release of the Final Disbursement Amount in Section 7.2(d) have been satisfied and (ii) all utility services for the Project have been completed and are in full operation.

(d) **Notice of Completion.** Lender may from time to time request Borrower shall sign and record a notice of completion for the Project in the office of the county recorder for the county in which the Property is located as soon as permitted under applicable law. Upon Lender's request, Borrower (i) shall sign and record a notice of cessation of labor and such other similar notices or documents as Lender may reasonably require to protect its interest in connection with the Construction Loan; and (ii) shall provide Lender with a copy of all notices recorded pursuant to this Section certified by the county recorder.

7.4 **Inspection.** Lender shall have the right at all times to enter upon and inspect the Property, or designate an agent to do the same, and to contact any Person supplying labor, materials, services, or equipment to the Property to verify information disclosed by Borrower or the Contractor to Lender, to obtain information relating to the Property, or for any other purpose relating to the Construction Loan, and Borrower authorizes each such Person to provide such information to Lender.

7.5 **Right to Stop Work.** If Lender determines that any portion of the Project does not conform in any material respect to the Scope of Work or the requirements of the Loan Documents, Lender shall have the right (a) to require Borrower and the Contractor to stop work on such portion of the Project and to correct the non-conforming matter as soon as reasonably practicable; and (b) to withhold any or all further disbursements relating to such portion of the Project until the matter has been corrected. No such action by Lender shall affect Borrower's obligation to complete the Project on or before the Completion Date or comply with the terms of the Loan Documents. Borrower, at its expense, shall take all actions which may be reasonably necessary to correct any non-conforming matter within the time period reasonably specified by Lender or, if no time period is specified, as soon as reasonably practicable.

7.6 **Lien Claims; Stop Notices.** Borrower shall promptly pay and discharge all claims and liens for labor, services, materials and equipment furnished in connection with the development of the Property. Lender shall have the right to withhold Construction Loan proceeds pursuant to any stop notice or bonded stop notice that is served on Lender in connection with the Construction Loan. Within ten (10) days after service of any such stop notice on Lender or the recordation of any mechanic's lien or other similar lien against the Property, Borrower (a) shall cause the claim evidenced by the stop notice or lien to be paid in full out of Borrower's own funds and not out of the Construction Loan proceeds and thereby cause such stop notice or lien to be released and discharged; (b) shall deliver to Lender or record, as appropriate, a surety bond complying with all applicable Governmental Requirements which is sufficient to release such stop notice or lien; or (c) shall make such other arrangements as may be acceptable to Lender for the payment of the claim evidenced by the stop notice or lien and the protection of Lender and the Property from the effect of the stop notice or lien.

7.7 **Compliance with Applicable Laws.** Borrower shall at all times comply with and keep in effect all Governmental Permits. Borrower shall at all times cause the Property to comply with (a) all Governmental Requirements; (b) all requirements and orders of all judicial authorities which have jurisdiction over the Property; and (c) all covenants, conditions, restrictions and other matters of record affecting the Property.

7.8 **Additional Insurance.** In addition to the insurance requirements set forth in Section 2.3 of this Security Instrument, Borrower at its expense shall at all times maintain in full force builder's all-risk insurance covering the Project and all materials stored on the Property, together with such endorsements as Lender may require, including vandalism, malicious mischief, earthquake, and flood coverage, and such other types of insurance as may from time to time be required by Lender. Failure to obtain, or cancellation of, such insurance is an event of default which could result in acceleration of the debt, or Lender refusal to honor Disbursement Requests.

7.9 **Cooperation.** Borrower shall at all times cooperate with Lender in order to ensure that the Property is developed in accordance with the requirements of the Loan Documents. Upon Lender's request, Borrower (a) shall execute such further documents and instruments and perform such further acts as may be required by Lender to carry out the terms and conditions of the Loan Documents; and (b) shall assign to Lender as additional collateral for the Loan such further rights, privileges, permits, licenses, approvals, contracts, agreements, reports, and other documents relating to the Property as Lender may require.

7.10 **No Duty to Inspect.** Lender shall have no obligation to supervise or inspect the Project or to examine any of Borrower's or Contractor's books and records relating to the Property. All such inspections and examinations by Lender, including Lender's review and approval of the Scope of Work or Construction Contract shall be for Lender's sole benefit and not for the benefit of Borrower. No inspection of the Project by Lender shall constitute or be construed as a representation or determination by Lender that the Project complies with the Scope of Work or that the Project is or will be free from defective work or materials.

7.11 **No Liability of Lender.** Borrower shall have the sole responsibility for all aspects of Borrower's business and the development of the Property, including (a) the quality, suitability and adequacy of the Scope of Work; (b) the inspection and supervision of construction of the Project; (c) the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors, material suppliers, consultants, sureties, bonding companies, property managers and other Persons supplying labor, materials, services, or equipment to the Property; (d) the accuracy of all Disbursement Requests; (e) the suitability, adequacy, enforceability, and validity of the Construction Contracts; (f) the conformance of the Project with the Scope of Work and the existence or non-existence of any defective work or materials in the Project; and (g) the legitimacy of any party making a Disbursement Request on Borrower's behalf. Borrower agrees that Lender shall not be directly or indirectly liable or responsible in any way or under any circumstances to Borrower or any other Person for any or all of the matters described in parts (a) through (g) of this Section, and Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective workmanship or materials in connection with the construction of the Project.

7.12 **Relationship of Parties.** Nothing contained in the Loan Documents or the transactions contemplated by the Loan Documents shall (a) constitute or be construed as the formation of a partnership or joint venture between Lender and Borrower or any Person; or (b) constitute or be construed as the creation of any confidential or fiduciary relationship of any kind between Lender and Borrower or any other Person; or (c) result in Lender being deemed to be a manager, controlling person, or other business associate or participant of any kind in the conduct of Borrower's business or affairs, including the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

IN WITNESS WHEREOF, Borrower has caused this instrument to be executed as of the date indicated on the Security Instrument.

BORROWER: Fritz & Fern Holdings LLC, A Wyoming Limited Liability Company



Signature

By: Kayla Fritz, Manager

DEED OF TRUST

EXHIBIT "B"

STATE SPECIFIC PROVISIONS – NEVADA

THIS DEED OF TRUST IS GOVERNED BY THE PROVISIONS OF NEVADA REVISED STATUTES (“NRS”) 106.300 TO 106.400, INCLUSIVE, AND SECURES ORIGINAL INDEBTEDNESS AND FUTURE ADVANCES TO A MAXIMUM PRINCIPAL AMOUNT OF TWO HUNDRED PERCENT OF THE ORIGINAL PRINCIPAL AMOUNT OF THE LOAN AS SET FORTH IN THE NOTE.

NOTICE: THIS INSTRUMENT SECURES, INTER ALIA, FUTURE ADVANCES. ALL SUCH FUTURE ADVANCES SHALL HAVE THE SAME LIEN PRIORITY AS IF MADE ON THE DATE HEREOF (SEE THE DEED OF TRUST FOR PARTICULARS).

AMENDMENTS

1. Section 2.13, Attornment at Lender’s Option, is hereby amended by adding the following language prior to the start of the first sentence:

“Subject to the terms of NRS §§ 40.255, 40.430, and 107.080.”

2. Section 4.3(a), Declaration and Notice of Default, is hereby amended to delete the final sentence in its entirety, and replace it as follows:

“Neither the Lender, the Trustee or agent conducting a sale, or any obligee, creditor, or the holder or holders of the Note or Loan Documents may bid or purchase at such sale.”

3. Section 4.3(b), Postponements: Multiple Parcels, is hereby amended to delete the third sentence in its entirety, and replace it as follows:

“Any Person, with the exception of Borrower, Trustee, and Lender, may purchase at any sale under this Deed of Trust.”

4. Section 4.8, Rescission of Notice of Default, is hereby amended by adding the following sentence to the end of Section 4.8:

“Notwithstanding the foregoing, pursuant to NRS 106.240, any deed of trust shall be extinguished ten (10) years following the date on which the debt secured thereby becomes wholly due.”

5. Section 4.10, Continuing Recourse Liability, is hereby amended such that the following language in (a), “full recourse liability”, is replaced with the following language: “damages”.

ADDITIONAL TERMS

Section 6.34.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Section 6.34 and the other provisions of this Deed of Trust, the terms and conditions of this Section 6.34 shall control and be binding.

Section 6.34.2 Advances. Any amounts paid out or advanced by Lender pursuant to the Construction Loan Rider attached to this Deed of Trust or any other provision of this Deed of Trust for the performance of any obligation of Borrower or to protect Lender’s security interest shall be deemed obligatory advances regardless of the person to whom such funds are furnished and such advances, together with interest thereon at the Default Rate set forth in the Note, shall be secured by this Deed of Trust.

Section 6.34.3 Construction Mortgage. If a Construction Loan Rider is part of the Loan Documents, this Deed of Trust is a "construction mortgage" pursuant to NRS 104.9334(8) of the Uniform Commercial Code.

Section 6.34.4 Incorporation of Certain Nevada Covenants. Where not inconsistent with the terms of this Deed of Trust, the following covenants, Nos. 1, 3, 4 (the rate of interest provided in the Note), 5, 6, 7 (a reasonable amount), 8 and 9 of NRS 107.030, are hereby adopted and made a part of this Deed of Trust. Upon any Event of Default by Borrower hereunder, Lender may (a) declare all sums secured immediately due and payable without demand or notice and/or (b) have a receiver appointed as a matter of right without regard to the sufficiency of the Property or any other security or guaranty. Except as otherwise provided by law, all remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity and may be exercised concurrently, independently or successively. A sale of the Property conducted pursuant to Covenants Nos. 6, 7 and 8 of NRS 107.030 may be conducted either as to the whole of the Property or in separate parcels and in such order as Trustee may determine.

Section 6.34.5 Environmental Matters. For purposes of this Deed of Trust, "Hazardous Materials" shall include, but shall not be limited to (a) flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, (b) all substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1901, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., and (c) all substances defined as "hazardous waste" in, or otherwise regulated by, any other applicable state or federal law, including, without limitation, NRS Chapters 444, 445A, 445B, 445C, 459, 477, 590, and 618, or in regulations now existing or hereafter promulgated pursuant thereto or in the Uniform Fire Code, 1988 Edition, or otherwise in effect under the applicable County Code at any time of determination. Borrower shall be solely responsible for, and shall indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Property, including without limitation: (i) all foreseeable consequential damage; (ii) the costs of any required or necessary repairs, cleanup or detoxification of the Property, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by Lender in connection with clauses (i) and (ii), including but not limited to reasonable attorneys' fees. Lender, or its agents, shall have the right to enter onto the Property to inspect the Property and to perform any testing of the Property for the existence of Hazardous Materials and to determine compliance with all environmental laws. Any such inspection by Lender shall not relieve Borrower of its obligations to comply with any such environmental law, rule or regulation.

The following provisions shall be deemed to be "Environmental Provisions" pursuant to NRS 40.502:

(a) **Waiver of Security.** In accordance with NRS 40.512, Lender may waive its lien against the Property or Improvements or any portion thereof, together with fixtures or any personal property thereon, to the extent such property is found to be environmentally impaired, and may exercise any and all rights and remedies of an unsecured creditor against Borrower and all of Borrower's assets for the recovery of damages, including, without limitation, seeking an attachment order under NRS Chapter 31. No such waiver shall be final or binding on Lender unless and until a final money judgment is obtained against Borrower. As between Lender and Borrower, Borrower shall have the burden of proving that any "release" (as defined in NRS 40.505) or threatened release was not knowingly or negligently caused or contributed to, or knowingly or willfully permitted or acquiesced to by Borrower or any related party (or any affiliate or agent of Borrower or any related party) and that Borrower made written disclosure of the release to Lender or that Lender otherwise obtained actual knowledge thereof. Borrower's obligations hereunder shall survive the foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transfer of the Property or any portion thereof or this Deed of Trust. For the purposes of any action brought under this subsection (a), Borrower hereby waives the defense of laches and any applicable statute of limitations.

(b) **Suit for Damages.** Pursuant to NRS 40.508, Lender may seek a judgment that Borrower has breached its covenants, representations and/or warranties with respect to the environmental matters contained in Section 2.3 of this Deed of Trust (the "Environmental Provisions"), and may commence and maintain an action or actions in any court of competent jurisdiction for enforcement of the Environmental Provisions and/or recovery of any and all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out of pocket costs or expenses (including, without limitation, court costs, reasonable consultants' fees and reasonable attorneys' fees whether incurred in

litigation or not and whether before or after judgment), incurred or advanced by Lender pursuant to the Environmental Provisions (collectively, the "Environmental Costs"). All Environmental Costs together with interest thereon at the rate of interest set forth in the Note shall be secured by this Deed of Trust and shall enjoy the same priority as the other obligations secured hereby. Borrower acknowledges and agrees that notwithstanding any term or provision contained in this Deed of Trust, the Note or any other Loan Document, Environmental Costs shall be exceptions to any nonrecourse or exculpatory provisions and Borrower shall be fully and personally liable for Environmental Costs. Such liability shall not be limited to the original principal amount of the Secured Obligations secured by this Deed of Trust. Borrower's obligations hereunder shall survive foreclosure, deed in lieu of foreclosure, release, reconveyance or any other transaction with respect to the Property or any portion thereof or this Deed of Trust. For the purposes of any action brought under this subsection (b), Borrower hereby waives the defense of any applicable statute of limitations.

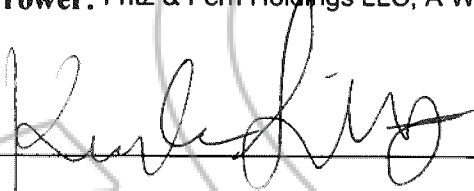
Section 6.34.6 Notice and Cure Periods. All notice and cure periods provided herein or in the Loan Documents shall run concurrently with any notice or cure period required by law. Without limiting the foregoing, Beneficiary or Trustee shall be entitled to cause a notice of breach or default and election to sell to be recorded and mailed if any event occurs which, with the giving of notice and/or passage of time, would constitute an Event of Default or would entitle Beneficiary to accelerate the indebtedness secured hereby and the recording and mailing to Grantor of such notice of breach or default and election to sell shall constitute notice of the failure to perform pursuant hereto or thereto. The foregoing shall not be deemed to limit, modify or impair any rights of Grantor to receive notices and/or any applicable cure periods expressly provided in this Deed of Trust.

Section 6.34.7 Assumption Fee. In the event of any sale, conveyance or other transfer, Lender may charge an assumption fee of one percent of the unpaid principal balance of the Loan.

Section 6.34.8 Trustee's Sale. In no event may the agent holding the trustee's sale under the Deed of Trust become a purchaser at the sale or be interested in any purchase at such a sale. [NRS 107.081]

IN WITNESS WHEREOF, Borrower has executed this instrument to be executed as of date indicated on the Deed of Trust.

Borrower: Fritz & Fern Holdings LLC, A Wyoming Limited Liability Company



By: Kayla Fritz, Manager

EXHIBIT A"

Lot 401A, of THE SECOND AMENDED MAP OF SUMMIT VILLAGE, according to the map thereof, filed in the office of the County Recorder of Douglas County, State of Nevada, on January 13, 1969, as Document No. 43419, and on Second Amended Map recorded on December 24, 1969, as Document No. 46671, Official Records.

1319-19-212-038

