

<p>DISTRICT COURT, GRAND COUNTY, COLORADO</p> <p>P.O. Box 192 307 Moffat Avenue Hot Sulphur Springs, CO 80451</p>	<p>DATE FILED: July 12, 2021 10:28 AM FILING ID: F5A20E4BCA6BC CASE NUMBER: 2021CV30008</p>
<p>Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC; REDWOOD CAPITAL FINANCE CO., LLC; GRANBY PRENTICE, LLC; and GR TERRA, LLC.</p>	
<p>Mark E. Champoux, #40480 Kyler K. Burgi, #46479 Philip D. Nickerson, #53410 DAVIS GRAHAM & STUBBS LLP 1550 Seventeenth Street, Suite 500 Denver, CO 80202 Telephone: (303) 892-9400 Facsimile: (303) 893-1379 E-mail: mark.champoux@dgsllaw.com kyler.burgi@dgsllaw.com philip.nickerson@dgsllaw.com</p> <p>Attorneys for Defendant Granby Prentice, LLC, as successor by contract and indemnitor to Redwood Capital Finance Co., LLC</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2021CV30008</p> <p>Division</p>
<p style="text-align: center;">MOTION TO DISMISS OF REDWOOD CAPITAL FINANCE CO., LLC, BY GRANBY PRENTICE, LLC, ITS SUCCESSOR BY CONTRACT AND INDEMNITOR</p>	

Pursuant to C.R.C.P. 12(b)(1), (4), and (5), Defendant Granby Prentice, LLC (“Granby Prentice”), as successor by contract and indemnitor to Redwood Capital Finance Co., LLC

(“Redwood”), hereby moves on behalf of Redwood to dismiss Plaintiff Granby Ranch Metropolitan District’s (“GRMD”) Second Amended Complaint as to Redwood.¹

INTRODUCTION

With its Second Amended Complaint (“SAC”), GRMD expands the roster of defendants in this case from the initial two to a bench of five. Some of this expansion is understandable given factual developments—for example, original defendant GP Granby Holdings, LLC (now operating as Gray Jay Ventures, LLC) completed a sale of Granby Ranch to GR Terra, LLC, which GRMD has now named as a new defendant. But other additions—including Redwood—appear mainly to be an effort by GRMD to bolster its lack of standing as a purported third-party beneficiary to the agreements it seeks to enforce. After the original two defendants filed motions to dismiss highlighting GRMD’s lack of third-party beneficiary standing, GRMD appears to be pursuing a strategy to reach into the past to find additional agreements and name additional parties, including Redwood, to conjure up a more plausible third-party beneficiary argument. For the reasons stated in the Private Defendants’ contemporaneously-filed motion to dismiss,² GRMD’s new effort still falls far short of the legal requirements for standing, and so the SAC should be dismissed in its entirety as to all defendants for lack of subject matter jurisdiction. But, if for any reason the SAC is not dismissed altogether for lack of standing, it should at least be dismissed as to Redwood, an entity that no longer even exists and the presence of which in this litigation would serve no valid purpose.

¹ **Certificate of Conferral:** Pursuant to C.R.C.P. 121, § 1-15(8), the undersigned has conferred with counsel for GRMD. GRMD opposes the requested relief.

² Defendants Gray Jay Ventures LLC, f/k/a GP Granby Holdings, LLC, Granby Prentice LLC, and GR Terra LLC’s Motion to Dismiss Second Amended Complaint (July 9, 2021) (the “Private Defendants’ Motion to Dismiss”).

Five years ago, Redwood, a Delaware limited liability company, sold and transferred to Granby Prentice all of its interest in the loan that financed the development of Granby Ranch. More than two years ago—still well before the foreclosure on the Granby Ranch development and before the events GRMD now complains of—Redwood was dissolved and cancelled and thus ceased to exist. As a matter of Delaware law, it cannot sue or be sued and, as a result, GRMD has not and cannot properly serve Redwood.

Due to Redwood’s status, and because Granby Prentice is the successor by contract and required to defend and indemnify Redwood, Granby Prentice asserts this motion on Redwood’s behalf. GRMD’s claims against Redwood should be dismissed for insufficient service of process or, in the alternative, lack of subject matter jurisdiction and failure to state a claim.

BACKGROUND³

Redwood was organized as a Delaware limited liability company. Ex. A. In 2005, Granby Realty Holdings LLC (“GRH”) entered into a loan agreement with Redwood to obtain financing for the Granby Ranch development (the “GRH Loan”). SAC ¶¶ 33, 34; Ex. B at 2.⁴ GRH granted Redwood a deed of trust on the Leased Premises (as defined in the SAC) and other property to secure repayment of that debt (the “Deed of Trust”). Ex. B at 1.

On or around April 15, 2016, Redwood sold and assigned all of its right, title, and interest in the GRH Loan, including the Deed of Trust, to Granby Prentice. Ex. C; SAC ¶ 33. As part of that transaction, Granby Prentice assumed Redwood’s obligations under the subject loan

³ Redwood incorporates by reference the background section contained in the Private Defendants’ Motion to Dismiss and includes herein only facts specific to Redwood.

⁴ Documents referenced in a complaint “may properly be considered by the trial court in deciding whether to dismiss a claim on any grounds.” *City of Boulder v. Pub. Serv. Co. of Colo.*, 996 P.2d 198, 203 (Colo. App. 1999).

agreement and related documents, agreed to indemnify Redwood for claims arising post-assignment, and assumed responsibility for litigation arising post-assignment. *See* Ex. C; SAC ¶ 33 (noting that Redwood is “predecessor in interest’ to Granby Prentice”). Granby Prentice, while disclaiming all liability, is appearing on behalf of Redwood as successor by contract under the Deed of Trust and GRH Loan documents and as indemnitor pursuant to its contractual duties to indemnify Redwood and assume responsibility for litigation related to the GRH Loan.

On December 31, 2012, GRH and Headwaters entered into the Second Amended and Restated Lease Purchase Agreement (the “LPA”), which agreement GRMD seeks to enforce through this litigation. SAC ¶ 21; SAC Ex. 6. Redwood was not a party to and did not sign the LPA. SAC Ex. 6.

On December 28, 2018, more than two years after selling all of its interest in the GRH Loan and the Deed of Trust to Granby Prentice, Redwood filed a Certificate of Cancellation with the Delaware Secretary of State, Ex. D, and made a similar filing with the California Secretary of State, where it was then authorized to do business, Ex. E; SAC ¶ 4. No party has ever challenged Redwood’s dissolution or sought to nullify the Certificate of Cancellation.

GRH later defaulted on the GRH Loan, which by then was owned by Granby Prentice. SAC ¶ 34; Ex. C. On March 24, 2020, Granby Prentice initiated a non-judicial foreclosure proceeding on the Leased Premises pursuant to its rights under the Deed of Trust. SAC ¶ 34. On August 14, 2020, the Grand County Public Trustee (the “Public Trustee”) held a public sale of the property encumbered by the Deed of Trust, including the Leased Premises. *Id.* ¶ 35. Granby Prentice had the winning bid and the Public Trustee issued a Certificate of Purchase to Granby Prentice. *Id.* Granby Prentice assigned the Certificate of Purchase to Gray Jay Ventures, LLC

f/k/a GP Granby Holdings, LLC (“Gray Jay”). *Id.* GRMD alleges that, following the foreclosure, Gray Jay “became the successor in interest to the LPA and was bound to assume the role of Landlord under the LPA” and to honor various rights under the LPA. *Id.* ¶ 36. The SAC does not contain any factual allegations that Redwood took title to the Leased Premises, took any action with respect to the foreclosure, or had any role in Gray Jay’s acquisition of the Leased Premises.

On February 23, 2021, GRMD filed this action, asserting claims against Headwaters Metropolitan District (“Headwaters”) and Gray Jay. On May 20, 2021, after Headwaters and Gray Jay moved to dismiss the initial complaint, GRMD filed its first Amended Complaint (“FAC”). On June 7, 2020, GRMD filed an Affidavit of Service (the “Affidavit”) that purports to describe GRMD’s attempt to serve the FAC and summons on Redwood. Ex. F. The Affidavit states that the FAC and summons were served on June 2, 2021 on Redwood’s “Registered Agent: National Registered Agents, Inc.” in Wilmington, Delaware. *Id.*

On June 7, 2021, GRMD filed a motion for leave to file the Second Amended Complaint (the “SAC”), which the Court granted. GRMD has not indicated that it has made any attempt to serve the SAC on Redwood.⁵ The SAC appears to assert two claims against Redwood: the Third Claim for Relief for breach of the LPA and the Sixth Claim for Relief for tortious interference with the LPA.

⁵ During a conferral with counsel for GRMD, undersigned indicated that counsel was authorized to and would accept service of any amended complaints on behalf of Granby Prentice, but explained that counsel was not authorized to accept service on behalf of Redwood due to its status as a cancelled entity.

ARGUMENT

GRMD's FAC and SAC should be dismissed as to Redwood for insufficient service of process under C.R.C.P. 12(b)(4). While not admitting service of either complaint was proper, if the Court disagrees that Redwood should be dismissed under C.R.C.P. 12(b)(4) and rules that the SAC is the operative complaint against Redwood, the SAC's claims against Redwood also fail for lack of subject matter jurisdiction and failure to state a claim.

I. C.R.C.P. 12(b)(4): GRMD's Complaint Must Be Dismissed for Insufficient Service of Process.

a. Legal Standard

A complaint should be dismissed under C.R.C.P. 12(b)(4) for insufficiency of service of process. *See Pioneer Astru Indus. v. Dist. Ct.*, 566 P.2d 1067, 1068 (Colo. 1977). Plaintiff carries the burden of proof to establish proper service where service is facially invalid. *Bush v. Winker*, 892 P.2d 328, 332 (Colo. App. 1994). Absent valid service, a court is without personal jurisdiction over a defendant and any judgment against it is a nullity. *Ledroit Law v. Kim*, 360 P.3d 247, 254 (Colo. App. 2015).

b. GRMD Failed to Properly Serve Redwood with the FAC.

GRMD's Affidavit states that the FAC and summons was served on Redwood through NRAI. Ex. F. However, Redwood, a Delaware limited liability company, was long ago dissolved and cancelled in accordance with Delaware law. Under the Delaware Limited Liability Company Act (the "Act"), no one has the authority to accept service of a complaint on Redwood's behalf and thus permit the advancement of a lawsuit against Redwood. GRMD's service attempt was therefore ineffective.

Where a limited liability company has been named as a defendant, C.R.C.P. 4(e)(4) and (12) permit service on “the registered agent for service as set forth in the most recently filed document in the records of the secretary of state of this state or of any other jurisdiction” and on “any designee authorized to accept service of process” or on “a person authorized by appointment or law to receive service of process for such entity or person.” C.R.C.P. 4(e)(4) & (12).

The Act provides that a limited liability company’s certificate of formation shall be cancelled upon the dissolution and winding up of the company. Del. Code. tit. 6 § 18-203(a). The cancellation occurs upon the filing of a certificate of cancellation with the Delaware Secretary of State. *Id.* Up until the certificate is filed, persons may act on behalf of the limited liability company to, among other things, prosecute and defend suits, settle and close the company’s business, and dispose of company property. *Id.* § 18-803(b).

“[Section] 18-803(b) of the [Delaware] LLC Act provides that suit generally may be brought by or against a limited liability company only until the certificate of cancellation is filed.” *Metro Commc'n Corp. BVI v. Advanced Mobilecomm Tech.*, 854 A.2d 121, 138-39 (Del. Ch. 2004); *see also Corder v. Antero Res. Corp.*, 322 F. Supp. 3d 710, 716 (N.D.W.V. 2018) (“Because an LLC cannot be sued after it dissolves and files a certificate of cancellation, Investment cannot be named as a party in this action.”). After the certificate is filed, the limited liability company may only act if a creditor or other party in interest successfully petitions the Court of Chancery for appointment of a trustee or receiver to take charge of the company’s property and affairs. Del. Code. tit. 6 § 18-805. The Delaware Chancery Court has agreed that a dissolved and cancelled limited liability company “cannot, therefore, be served with process through traditional means available for service upon a viable legal entity,” particularly where the entity “no longer has a

registered agent or active senior officers upon whom personal service could be perfected.” *Tratado de Libre Commercía, LLV v. Splitcase Tech., LLC*, 2019 WL 1057976, at *2 (Del. Ch. March 6, 2019).⁶

“The mandatory requirements for valid service of process are fundamental because of the due process requirements of notice.” *Bush*, 892 P.2d at 332. Here, Redwood filed its Certificate of Cancellation on December 28, 2018. Ex. D. As of that date, it could no longer “prosecute and defend suits” or “settle and close” its business. Del. Code tit. 6 § 18-803(b); *see also Metro Commc'n*, 854 A.2d at 138-39. GRMD claims to have effected service on Redwood through its “Registered Agent,” NRAI. Ex. F. But GRMD has not demonstrated that NRAI remains a valid registered agent more than two years after Redwood filed its Certificate of Cancellation and under the circumstances of this case.

Regardless, even if NRAI was somehow deemed to be Redwood’s registered agent, completion of service of the FAC and summons is an action that would result in the initiation of a lawsuit against Redwood. *See* C.R.C.P. 3(a). Redwood, however, cannot sue or be sued, and no one is authorized to take those actions on its behalf. *See Metro Commc'n*, 854 A.2d at 138-39 (“[A]bsent statutory authority, no claim may be brought against a dissolved entity.”). Indeed, any act that furthers the initiation of a lawsuit against Redwood—including the act of accepting service of the FAC and summons, which commences a lawsuit under C.R.C.P. 3(a)—is not authorized under the Act. *Id.*; *see also* Del. Code tit. 6 §§ 18-803, 805. Thus, no one—not even NRAI—has

⁶ The court in *Tratado* permitted the plaintiff, who was seeking to nullify a certificate of cancellation and to appoint a trustee, to serve the cancelled entity by publication and certified mail under Del. Ch. Ct. R. 4(d)(7). *Id.* That is not the relief GRMD seeks here and service in that manner in this case would be inconsistent with the Colorado Rules of Civil Procedure and the Act.

the authority to accept service on behalf of Redwood because doing so has the effect of commencing suit against Redwood. The Affidavit's self-serving statement to the contrary that documents were served on an "Intake Specialist Authorized to Accept" is of no effect and contrary to Delaware law. *See* Ex. F. As the Chancery Court has recognized, a cancelled limited liability company cannot be "served with process through traditional means." *See Tratado*, 2019 WL 1057976, at *2. GRMD's attempt at service of the FAC was ineffective and, as a result, this Court lacks personal jurisdiction over Redwood. *See Ledroit Law*, 360 P.3d at 254.

c. GRMD Has Not Attempted Service of the SAC.

As of this filing, GRMD has not demonstrated that it has even attempted service of the SAC. As a result, to the extent the SAC is the operative complaint as to Redwood, the SAC must be dismissed as to Redwood for insufficient service of process. C.R.C.P. 12(b)(4).

d. Further Service Attempts Would be Futile.

GRMD has not established that Redwood was properly served and, under the current circumstances and for the reasons explained above, any further attempts would be futile. Thus, the Court should dismiss Redwood from this action pursuant to C.R.C.P. 12(b)(4). *See Pioneer Astru Indus.*, 566 P.2d at 1068.

II. C.R.C.P. 12(b)(1): The Court Lacks Subject Matter Jurisdiction Over GRMD's Claims Against Redwood.

GRMD is not a party to or third party beneficiary of the LPA. Therefore, GRMD lacks standing to assert a breach of or tortious interference with the LPA against Redwood and the SAC must be dismissed for lack of subject matter jurisdiction. Redwood joins in and incorporates by reference Section I of the Private Defendants' Motion to Dismiss.

III. C.R.C.P. 12(b)(5): GRMD Fails to State a Claim Against Redwood.

a. Legal Standard

Under C.R.C.P. 12(b)(5), a claim must be dismissed if it fails to state a claim upon which relief can be granted. To survive under this standard, the complaint must “state a claim for relief that is plausible on its face.” *Warne v. Hall*, 373 P.3d 588, 589 (Colo. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In determining whether a complaint states a claim for relief, courts “are not required to accept as true legal conclusions that are couched as factual allegations.” *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011).

b. GRMD Fails to Allege Facts Supporting its Breach of Contract Claim.

The SAC’s Third Claim for Relief is asserted against Redwood for breach of the LPA. SAC ¶¶ 57-61. In order to plead a breach of contract claim, GRMD must establish (1) the existence of a contract between defendant and plaintiff, (2) performance by the plaintiff, (3) breach of the contract, and (4) damages. *See Horton v. Bischof & Coffman Constr., LLC*, 217 P.3d 1262, 1271-72 (Colo. App. 2009).

GRMD’s claim against Redwood fails on at least two elements. GRMD fails to allege that Redwood was ever a party to and bound by the LPA. GRMD does not and cannot allege that Redwood, Granby Prentice, or Gray Jay were signatories to the LPA. *See* SAC Ex. 6. Instead, GRMD’s sole theory is that the party that took title to the Leased Premises through the foreclosure became bound by the LPA. SAC ¶ 36 (“Following the foreclosure, Gray Jay Ventures became the successor in interest to the LPA and was bound to assume the role of Landlord under the LPA”). But, according to the SAC, that party is *Gray Jay*—not Redwood. *Id.* ¶¶ 33, 36. Nowhere does the SAC allege that Redwood took title to the Leased Premises or otherwise allege any facts establishing occurrence of the condition precedent (i.e. acquiring title) for Redwood to become

bound by the LPA. GRMD acknowledges that Redwood's interest in the Deed of Trust was transferred to Granby Prentice, *id.* ¶ 33, and admits that, in order for Redwood to have any obligations under the LPA, it needed to first take title to the Leased Premises: “. . . Redwood Capital agreed to be bound by the LPA and all of Headwater[s'] rights under the LPA, including the purchase provisions of Section 23, and to act as Landlord *if it acquired title to the Leased Premises.*” *Id.* ¶ 59 (emphasis added). The SAC, quoting the LPA, states that the lender could be bound by the terms of the LPA “to the extent that such Lender would succeed to the interest of [GRH] and/or acquire title or right to possession of the Leased Premises.” *Id.* ¶ 39; SAC Ex. 6 § 13. Because the SAC does not allege that Redwood succeeded to the interest of GRH or took title to the Leased Premises, it fails to allege that Redwood was ever bound by the LPA.

GRMD also fails to allege a breach by Redwood. Because, according to GRMD, Redwood is only bound by the LPA “if it acquired titled to the Leased Premises,” SAC ¶ 59, and because GRMD does not allege that Redwood acquired title to the Leased Premises, it cannot have breached the LPA. Moreover, the SAC contains no factual allegations that Redwood acted at all post-foreclosure (after title passed from GRH), let alone in contravention of the LPA. In other words, the SAC's factual allegations do not support any legal basis to find that Redwood was bound by the LPA yet “refused to acknowledge the existence of the LPA,” “failed to act as Landlord,” and failed to “recognize the rights of Headwaters” after foreclosure of the Leased Premises. *See id.* ¶ 60. These deficiencies cannot be corrected by amendment. GRMD cannot transform Redwood into a party to the LPA or allege that Redwood took title to the Leased Premises. C.R.S. § 38-38-501 (providing that holder of certificate or purchase takes title to foreclosed property).

d. The SAC Does Not State a Claim for Tortious Inference Against Redwood.

GRMD's Sixth Claim for Relief against Redwood for tortious interference fails for at least two reasons. First, GRMD is not a party to or third-party beneficiary of the LPA. Thus, GRMD cannot assert a claim for tortious interference with the LPA. *See* Private Defendants' Motion to Dismiss § IV.⁷

Second GRMD does not allege that Redwood took any action to interfere with the LPA. GRMD admits that tortious interference requires, among other things, "action by the defendant that induced a breach of the contract." SAC ¶ 74 (emphasis added); *see* CJI-Civ 24:1 (requiring "words or conduct, or both"). The SAC contains no allegation that Redwood took action to interfere with Headwaters' 2020 performance of the LPA, which is no surprise given that Redwood ceased to exist approximately two years earlier. *See* Ex. C. The SAC alleges only that *Gray Jay* intentionally tried to prevent Headwaters from operating the Amenities. *Id.* ¶ 76. Because the SAC fails to allege that Redwood took an action that induced a breach of the LPA, the Sixth Claim for Relief against Redwood must be dismissed.

CONCLUSION

GRMD failed to properly serve Redwood and, due to Redwood's status as a cancelled Delaware limited liability company, GRMD cannot correct such defect. The Court further lacks

⁷ To the extent the Court finds that GRMD has successfully alleged that Redwood was bound by the LPA, this claim fails for another reason: a defendant cannot tortiously interfere with its own contract. *MDM Grp. Assocs. v. CX Reinsurance Co. Ltd.*, 165 P.3d 882, 886 (Colo. App. 2007) (holding a plaintiff "cannot maintain an action against [defendant] for tortious interference with any contract to which [defendant] is a party"). Redwood incorporates by reference Section IV of the Private Defendants' Motion to Dismiss.

subject matter jurisdiction as to GRMD's claims and, even if it had jurisdiction, GRMD fails to state a claim. GRMD's claims against Redwood must be dismissed.

Dated: July 9, 2021

DAVIS GRAHAM & STUBBS LLP

/s/Mark E. Champoux

Mark E. Champoux

Kyler K. Burgi

Philip D. Nickerson

ATTORNEYS FOR DEFENDANT GRANBY
PRENTICE, LLC, AS SUCCESSOR AND
INDEMNITOR TO REDWOOD CAPITAL FINANCE
Co., LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO DISMISS OF REDWOOD CAPITAL FINANCE CO., LLC, BY GRANBY PRENTICE, LLC, ITS SUCCESSOR BY CONTRACT AND INDEMNITOR** was served via **Colorado Court E-File** system on this 9th day of July 2021, addressed to the following:

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s/ Paige Finnell

Paige Finnell

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CASE NUMBER: 2021CV30008

EXHIBIT A

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "REDWOOD CAPITAL FINANCE COMPANY, LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE TWENTY-FOURTH DAY OF SEPTEMBER, A.D. 1998, AT 1 O`CLOCK P.M.

CERTIFICATE OF CANCELLATION, FILED THE TWENTY-EIGHTH DAY OF DECEMBER, A.D. 2018, AT 2:21 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "REDWOOD CAPITAL FINANCE COMPANY, LLC".




Jeffrey W. Bullock, Secretary of State

2947866 8100H
SR# 20212613645

Authentication: 203588283
Date: 07-01-21

You may verify this certificate online at corp.delaware.gov/authver.shtml

CERTIFICATE OF FORMATION
OF
REDWOOD CAPITAL FINANCE COMPANY, LLC

This Certificate of Formation of Redwood Capital Finance Company, LLC (the "LLC"), dated as of September 24, 1998, is being duly executed and filed by Kaye T. Walsh, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. § 18-101, *et seq.*).


FIRST. The name of the limited liability company formed hereby is

Redwood Capital Finance Company, LLC

SECOND. The address of the registered office of the LLC in the State of Delaware is c/o National Registered Agents, Inc., 9 East Loockerman Street, Dover, County of Kent, DE 19901.

THIRD. The name and address of the registered agent for service of process on the LLC in the State of Delaware is National Registered Agents, Inc., 9 East Loockerman Street, Dover, County of Kent, DE 19901.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.


Name: Kaye T. Walsh
Authorized Person

DATE FILED: July 12, 2021 10:28 AM
FILING ID: F5A20E4BCA6BC
CASE NUMBER: 2021CV30008

EXHIBIT B

2005-005679 05/02/2005 03:51P DT SARA L. ROSENE
1 of 25 R 125.00 D 0.00 GRAND COUNTY CLERK

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

Redwood Capital Finance Company, LLC
150 California Street, 22nd Floor
San Francisco, California 94111
Attention: Brian Heafey

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

THIS DOCUMENT SECURES FUTURE ADVANCES TO FINANCE CONSTRUCTION OF IMPROVEMENTS ON THE ENCUMBERED REAL PROPERTY, AND IS MADE PURSUANT TO A REVOLVING CREDIT ARRANGEMENT AS IDENTIFIED IN C.R.S. SECTION 38-39-106(3).

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of June 1, 2005, by GRANBY REALTY HOLDINGS LLC ("Trustor"), to the Public Trustee of the County of Grand, State of Colorado, as Trustee ("Trustee"), for the benefit of REDWOOD CAPITAL FINANCE COMPANY, LLC, a Delaware limited company, as Beneficiary ("Beneficiary").

ARTICLE 1. GRANT IN TRUST

1.1 **GRANT.** For the purposes of and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, bargains, sells, conveys and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all of that real property located in the Town of Granby, County of Grand, State of Colorado, described on Exhibit A attached hereto, together with all right, title, interest and privileges of Trustor in and to all streets, ways, roads and alleys used in connection with or pertaining to such real property, and together with all development rights or credits, air rights, water, water rights and water stock related to such real property, and all minerals, oil and gas, and other hydrocarbon substances in, on or under the real property, and all appurtenances, easements, rights and rights of way appurtenant or related thereto; all buildings, other improvements and fixtures now or hereafter located on the real property, including, but not limited to, all apparatus, equipment, and appliances used in the operation or occupancy of the real property, it being intended by the parties that all such items shall be conclusively considered to be a part of the real property, whether or not attached or affixed to the real property (the "Improvements"); all interest or estate which Trustor may hereafter acquire in the property described above, and all additions and accretions thereto, and the proceeds of any of the foregoing; (all of the foregoing being collectively referred to as the "Subject Property"). The listing of specific rights or property shall not be interpreted as a limit of general terms.

ARTICLE 2. OBLIGATIONS SECURED

2.1 **OBLIGATIONS SECURED.** Trustor makes this Deed of Trust for the purpose of securing the following obligations ("Secured Obligations"):

- (a) Payment to Beneficiary of all sums at any time owing under that certain promissory note ("Note") of even date herewith, in the principal amount of TWENTY-NINE MILLION FIVE HUNDRED THOUSAND AND 00/100THS DOLLARS (\$29,500,000.00) executed by Trustor, and payable to the order of Beneficiary, as lender; and



TITLE COMPANY OF THE ROCKIES, INC.

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- (b) Payment and performance of all covenants and obligations of Trustor under this Deed of Trust; and
 - (c) Payment and performance of all covenants and obligations on the part of Trustor under (i) that certain Loan Agreement ("Loan Agreement") of even date herewith, by and between Trustor and Beneficiary; and (ii) each other Loan Document (as defined in the Loan Agreement) to which Trustor is a party;
 - (d) Payment and performance of all future advances and other obligations that the then record owner of all or part of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when such future advance or obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and
 - (e) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced, including, without limitation: (i) modifications of the required principal payment dates or interest payment dates or both, as the case may be, deferring or accelerating payment dates wholly or partly; or (ii) modifications, extensions or renewals at a different rate of interest whether or not in the case of a note, the modification, extension or renewal is evidenced by a new or additional promissory note or notes.
- 2.2 **OBLIGATIONS.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, prepayment charges, late charges and loan fees at any time accruing or assessed on any of the Secured Obligations. Solely for purposes of applying C.R.S. § 38-39-106, this Deed of Trust secures future advances up to the total maximum principal amount of \$32,450,000. This Deed of Trust shall be effective to secure payment of all advances under the Note, both obligatory and optional, up to such amount outstanding from time to time, to the same extent and with the same effect and priority as if such total amount had been fully disbursed on or before the date of recording of this Deed of Trust.
- 2.3 **INCORPORATION.** All terms of the Secured Obligations and the documents evidencing such obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property shall be deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) the Note or the Loan Agreement may permit borrowing, repayment and reborrowing so that repayments shall not reduce the amounts of the Secured Obligations to the extent reborrowed; and (b) the rate of interest on one or more Secured Obligations may vary from time to time.

ARTICLE 3. ASSIGNMENT OF LEASES AND RENTS

- 3.1 **ASSIGNMENT.** Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Subject Property or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Subject Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Subject Property or any portion thereof, whether now existing or entered into after the date hereof, if any ("Leases"); and (b) the rents, issues, deposits and profits of the Subject Property, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases ("Payments"). The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and Payments is not contingent upon, and may be exercised without possession of, the Subject Property.
- 3.2 **GRANT OF LICENSE.** Beneficiary confers upon Trustor a license ("License") to collect and retain the Payments as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect

and apply the Payments pursuant to Section 6.4 without notice and without taking possession of the Subject Property. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

- 3.3 **EFFECT OF ASSIGNMENT.** The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Subject Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Subject Property by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Subject Property; or for any negligence in the management, upkeep, repair or control of the Subject Property resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person. Beneficiary and Trustee shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary or Trustee hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.
- 3.4 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) prior to the date of this Deed of Trust, Trustor delivered to Beneficiary a true, accurate and complete list of all Leases, if any; (b) all existing Leases, if any, are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.
- 3.5 **COVENANTS.** Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases and enforce, by all available remedies, performance by the lessees of the material obligations of the lessees contained in the Leases; (b) give Beneficiary prompt written notice of any default which occurs with respect to any of the Leases, whether the default be that of the lessee or of the lessor; (c) intentionally omitted; (d) deliver to Beneficiary fully executed, counterpart original(s) of each and every Lease if requested to do so; and (e) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance reasonably acceptable to Beneficiary, as Beneficiary may reasonably request. Trustor shall not, without Beneficiary's prior written consent or as otherwise permitted by any provision of the Loan Agreement: (i) enter into any Leases after the date of this Deed of Trust; (ii) execute any other assignment relating to any of the Leases; (iii) discount any rent or other sums due under the Leases or collect the same in advance, other than to collect rent one (1) month in advance of the time when it becomes due; (iv) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge the lessees from any obligations thereunder; (v) consent to any assignment or subletting by any lessee; or (vi) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance. Any such attempted action in violation of the provisions of this Section 3.5 shall be null and void. Without in any way limiting the requirement of Beneficiary's consent hereunder, any sums received by Trustor in consideration of any termination (or the release or discharge of any lessee), modification or amendment of any Lease shall be applied to reduce the outstanding Secured Obligations and any such sums received by Trustor shall be held in trust by Trustor for such purpose.
- 3.6 **ESTOPPEL CERTIFICATES.** Within thirty (30) days after written request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary estoppel certificates

executed by Trustor and by each of the lessees, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 4. SECURITY AGREEMENT AND FIXTURE FILING

- 4.1 **SECURITY INTEREST.** Trustor hereby grants and assigns to Beneficiary as of the "Effective Date" (defined in the Loan Agreement) a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property and embedded software therein, wherever situated, which are or are to be incorporated into, used in connection with, or appropriated for use on (i) the real property described on Exhibit A attached hereto and incorporated by reference herein (to the extent the same are not effectively made a part of the real property pursuant to Section 1.1 above) or (ii) the Improvements (which real property and Improvements are collectively referred to herein as the Subject Property); together with all rents, issues, deposits and profits of the Subject Property (to the extent, if any, they are not subject to Article 3); all inventory, accounts, cash receipts, deposit accounts, the Lockbox Account and all Accounts (including the Tax and Insurance Account, Operating Expense Account and the Security Deposit Account) (each as defined in the Security Agreement and Lockbox Agreement dated as of the date hereof among Borrower, Lender and Servicer (as defined therein)); the Account (as defined in the Loan Agreement) into which Loan proceeds and borrower's funds shall be deposited from time to time; accounts receivable, contract rights, general intangibles, chattel paper (whether electronic or tangible), instruments, documents, notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Subject Property or any business now or hereafter conducted thereon by Trustor (including all of Trustor's right, title and interest to the Village Homes Option Agreement (as defined in the Loan Agreement)); all rights of Trustor under any interest rate hedge, cap, swap or similar agreement; all of Trustor's rights of every kind under or pursuant to the Declarations (as defined below), and all of Trustor's rights under or pursuant to any and all other documents which may hereafter be executed or otherwise made effective with respect to the creation or modification of one or more common interest communities on the Subject Property or the creation of one or more associations to govern or administer such communities, including, without limitation, all development rights, special declarant rights, rights with respect to any architectural review committee, and other rights of Trustor as a declarant, a successor declarant or an assignee of declarant under such declarations; all permits consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Subject Property; all deposits or other security now or hereafter made with or given to utility companies by Trustor with respect to the Subject Property; all advance payments of insurance premiums made by Trustor with respect to the Subject Property; all plans, drawings and specifications relating to the Subject Property; all loan funds held by Beneficiary, whether or not disbursed; all funds deposited with Beneficiary or another depository pursuant to the Loan Agreement or any other Loan Documents; all reserves, deferred payments, deposits, accounts, refunds and payments of any kind related to the Subject Property or any portion thereof; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing; together with all books, records and files relating to any of the foregoing. To the extent that any of the Collateral is deemed to be real property or a real property interest under the laws of the State of Colorado, then the same shall be deemed included within the definition of Subject Property as set forth above and included within the grant and conveyance to the Trustee. "Declarations" shall mean the following: (i) Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Silver Creek (recorded

June 1, 1983), (ii) Designation of Territory (recorded January 17, 1984); (iii) First Amendment to Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Silver Creek (recorded December 12, 1997); (iv) Declaration of Covenants, Conditions, and Restrictions for Silver Creek Development Area (recorded May 11, 2000); (v) Large Planned Community Affidavit, Silver Creek Development Area (recorded May 11, 2000); (vi) Declaration of Covenant, SolVista Golf & Ski Ranch (recorded August 14, 2003); (vii) Amendment to Large Planned Community Affidavit, Silver Creek Development Area (recorded November 10, 2003); (viii) Supplemental Declaration (recorded March 7, 2005); and (ix) Declaration of Covenants, Conditions, and Restrictions for Silver Creek Residential (recorded May 11, 2000).

As to all of the above described personal property which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust constitutes a fixture filing under Sections 4-9-313 and 4-9-402 of the Uniform Commercial Code, as in effect in the State of Colorado from time to time ("UCC"), and is acknowledged and agreed to be a "construction mortgage" under such Sections.

- 4.2 **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has made no presently effective assignment or encumbrance of the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Trustor's principal place of business is located at the address shown in Section 7.11.
- 4.3 **RIGHTS OF BENEFICIARY.** In addition to Beneficiary's rights as a "Secured Party" under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) upon the occurrence of a Default, endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral.
- 4.4 **RIGHTS OF BENEFICIARY ON DEFAULT.** Upon the occurrence of a Default under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under any Loan Document, the UCC or otherwise at law:
- (a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Subject Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place and in any lawful manner all or any part of the Collateral and bid and become purchaser at any such sales; and
 - (b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.
 - (c) Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under Section 4-9-505 of the UCC, or other applicable law.
- 4.5 **POWER OF ATTORNEY.** Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact

Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor herein; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

- 4.6 **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Section or the other Loan Documents, so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Trustor's business and in accordance with the Loan Agreement.

ARTICLE 5. RIGHTS AND DUTIES OF THE PARTIES

- 5.1 **TITLE.** Trustor represents and warrants that, except as disclosed to Beneficiary in a writing which refers to this warranty, Trustor lawfully holds and possesses fee simple title to the Subject Property without limitation on the right to encumber, and this Deed of Trust is a first and prior lien on the Subject Property, except that the personal property of Trustor listed on Exhibit B attached hereto (such personal property, the "Excluded Items") is subject to a prior lien (a copy of the documentation giving rise to which has been provided to Beneficiary by Trustor), and accordingly this Deed of Trust is a second lien on the Excluded Items.
- 5.2 **TAXES AND ASSESSMENTS.** Subject to Trustor's rights to contest payment of taxes as may be provided in the Loan Agreement, Trustor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided, however, Trustor shall have no obligation to pay taxes which may be imposed from time to time upon Beneficiary and which are measured by and imposed upon Beneficiary's net income.
- 5.3 **TAX AND INSURANCE IMPOUNDS.** At Beneficiary's option at any time after the first occasion on which an Event of Default shall have occurred, Trustor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments and levies imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that any amounts paid by Trustor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Trustor of the increased amounts required to pay all amounts due, whereupon Trustor shall pay to Beneficiary within thirty (30) days thereafter the additional amount as stated in Beneficiary's notice. All sums so paid shall not bear interest, except to the extent and in any minimum amount required by law; and Beneficiary shall, unless Trustor is otherwise in Default hereunder or under any Secured Obligation, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for the application to and payment of, such sums, taxes, assessments, levies, charges, and insurance premiums. Upon Default by Trustor hereunder or under any Secured Obligation, Beneficiary may apply all or any part of said sums to any Secured Obligation and/or to cure such Default, in which event Trustor shall be required to restore all amounts so applied, as well as to cure any other events or conditions of Default not cured by such application. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee whereupon Beneficiary and its Trustee shall be released from all liability with respect thereto.

5.4 **PERFORMANCE OF SECURED OBLIGATIONS.** Trustor shall promptly pay and perform each Secured Obligation when due.

5.5 **LIENS, ENCUMBRANCES AND CHARGES.** Trustor shall immediately discharge any lien not approved by Beneficiary in writing that has or may attain priority over this Deed of Trust. Trustor shall pay when due all obligations secured by or reducible to liens and encumbrances which shall now or hereafter encumber or appear to encumber all or any part of the Subject Property or any interest therein, whether senior or subordinate hereto.

5.6 **DAMAGES; INSURANCE AND CONDEMNATION PROCEEDS.**

(a) The following (whether now existing or hereafter arising) are all absolutely and irrevocably assigned by Trustor to Beneficiary and, at the request of Beneficiary, shall be paid directly to Beneficiary: (i) all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation for public or private use affecting all or any part of, or any interest in, the Subject Property; (ii) all other claims and awards for damages to, or decrease in value of, all or any part of, or any interest in, the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to all or any part of the Subject Property; and (iv) all interest which may accrue on any of the foregoing. Subject to applicable law, and without regard to any requirement contained in Section 5.7(d), Beneficiary may at its discretion apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in any order, and/or Beneficiary may release all or any part of the proceeds to Trustor upon any conditions Beneficiary may impose. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action and may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary; provided, however, in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure, including, without limitation, any malfeasance or nonfeasance by Beneficiary or its employees or agents.

(b) So long as there is no Event of Default, Beneficiary shall permit insurance proceeds held by Beneficiary to be used for repair or restoration, conditioned upon the following: (i) the deposit with Beneficiary of such additional funds which Beneficiary reasonably determines are needed to pay all costs of the repair or restoration, (including, without limitation, taxes, financing charges, insurance and rent during the repair period); (ii) the establishment of an arrangement for lien releases and disbursement of funds reasonably acceptable to Beneficiary; (iii) the delivery to Beneficiary of plans and specifications for the work, a contract for the work signed by a contractor acceptable to Beneficiary, a cost breakdown for the work and a payment and performance bond for the work, all of which shall be reasonably acceptable to Beneficiary; and (iv) the delivery to Beneficiary of evidence reasonably acceptable to Beneficiary (aa) that after completion of the work the income from the Subject Property will be sufficient to pay all expenses and debt service for the Subject Property; (bb) of the continuation of Leases reasonably acceptable to and required by Beneficiary; (cc) that upon completion of the work, the value of the Subject Property will be at least as great as it was before the damage occurred; (dd) that there has been no material adverse change in the financial condition or credit of Trustor since the date of this Deed of Trust; and (ee) of the satisfaction of any additional conditions that Beneficiary may reasonably establish to protect its security. Trustor hereby acknowledges that the conditions described above are reasonable.

5.7 **MAINTENANCE AND PRESERVATION OF THE SUBJECT PROPERTY.**

(a) Trustor covenants: (i) to insure the Subject Property against such risks as Beneficiary may reasonably require and, at Beneficiary's request, to provide evidence of such insurance to Beneficiary, and to comply with the requirements of any insurance companies insuring the Subject Property; (ii) to keep the Subject Property in good condition and repair; (iii) except in

the ordinary course of operation of the golf course and ski facility which are part of the Subject Property and except for the construction contemplated by the Loan Agreement, not to remove or demolish the Subject Property or any part thereof, not to alter, restore or add to the Subject Property except in the ordinary course of development and operation of the Subject Property, and not to initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property except in the ordinary course of development and operation of the Subject Property without Beneficiary's prior written consent or as provided in the Loan Agreement; (iv) to complete or restore promptly and in good and workmanlike manner the Subject Property, or any part thereof which may be damaged or destroyed, without regard to the adequacy of insurance proceeds; (v) to comply with all laws, ordinances, regulations and standards, and all covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character which affect the Subject Property and pertain to acts committed or conditions existing thereon, including, without limitation, any work, alteration, improvement or demolition mandated by such laws, covenants or requirements; (vi) not to commit or permit waste of the Subject Property or Collateral; and (vii) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

- (b) Without limitation on the generality of the provisions of Section 5.7(a)(iii) above, and except as otherwise provided in the Loan Agreement or to the extent already created as of the date of this Deed of Trust, Trustor shall not, without the prior written consent of Beneficiary, which may be withheld in Beneficiary's sole discretion, consent to or allow the creation of any so-called special districts, special improvement districts, benefit assessment districts or similar districts of any nature, or any other body or entity of any type, or allow to occur any other event that would or might result in the imposition of any additional taxes, assessments or other monetary obligations or burdens on the Subject Property, and this provision shall serve as **RECORD NOTICE** to any such district or districts or any governmental entity under whose authority such district or districts exist or are being formed that, should Trustor or any other person or entity include all or any portion of the Subject Property in such district or districts, whether formed or in the process of formation, without first obtaining Beneficiary's express written consent, then the lien of this Deed of Trust and the rights and interests in the Subject Property arising by virtue of this Deed of Trust in favor of Beneficiary or its successors in interest (which term shall include, without limitation, any foreclosure purchaser or purchaser acquiring by deed-in-lieu of foreclosure, and any transferee of the Subject Property following the completion of foreclosure or any deed-in-lieu thereof) shall be senior and superior to any taxes, assessments, levies and charges of any nature, or any liens (whether statutory, contractual or otherwise) levied or imposed upon the Subject Property or any portion thereof as a result of the inclusion of the Subject Property in such district or districts.

5.8 **DEFENSE AND NOTICE OF LOSSES, CLAIMS AND ACTIONS.** At Trustor's sole expense, Trustor shall protect, preserve and defend the Subject Property and Collateral and title to and right of possession of the Subject Property and Collateral, the security hereof and the rights and powers of Beneficiary hereunder against all adverse claims. Trustor shall give Beneficiary prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to the Subject Property or Collateral and of any condemnation offer or action.

5.9 **INTENTIONALLY DELETED.**

5.10 **COMPENSATION; EXCULPATION; INDEMNIFICATION.**

- (a) Trustor shall pay to Trustee compensation and reimbursement for services and expenses in the administration of this trust pursuant to C.R.S. Section 38-37-103, including reasonable attorneys' fees. Trustor shall pay to Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including, without limitation, any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be

liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Subject Property or under this Deed of Trust; or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Subject Property after a Default or from any other act or omission of Beneficiary in managing the Subject Property after a Default unless the loss is caused by the gross negligence or willful misconduct of Beneficiary and no such liability shall be asserted against or imposed upon Beneficiary, and all such liability is hereby expressly waived and released by Trustor.

- (b) Trustor indemnifies Beneficiary against, and holds Beneficiary harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or in performance of any act required or permitted hereunder or by law; (iii) as a result of any failure of Trustor to perform Trustor's obligations; or (iv) by reason of any alleged obligation or undertaking on Beneficiary's part to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property. The above obligation of Trustor to indemnify and hold harmless Beneficiary shall survive the release and cancellation of the Secured Obligations and the release and reconveyance or partial release and reconveyance of this Deed of Trust.
- (c) Trustor shall pay all amounts and indebtedness arising under this Section 5.10 immediately upon demand by Beneficiary together with interest thereon from the date of such demand at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 5.11 **SUBSTITUTION OF TRUSTEES.** From time to time, by a writing, signed and acknowledged by Beneficiary and recorded in the Office of the Recorder of the County in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Trustee or any successor. Such writing shall set forth any information required by law. The recordation of such instrument of substitution shall discharge Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Trustee herein. A writing recorded pursuant to the provisions of this Section 5.11 shall be conclusive proof of the proper substitution of such new Trustee.
- 5.12 **DUE ON SALE OR ENCUMBRANCE.** Except as otherwise provided in the Loan Agreement, if the Subject Property or any interest therein, or if any portion of the limited liability company interests in Trustor, shall be sold, transferred, mortgaged, assigned, further encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, without the prior written consent of Beneficiary, THEN Beneficiary, in its sole discretion, may declare all Secured Obligations immediately due and payable.
- 5.13 **RELEASES, EXTENSIONS, MODIFICATIONS AND ADDITIONAL SECURITY.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under the Secured Obligations ("Interested Parties"), Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Subject Property and other security for the Secured Obligations. None of the foregoing actions shall release or reduce the personal liability of any of said Interested Parties, or release or impair the priority of the lien of this Deed of Trust upon the Subject Property and Collateral.
- 5.14 **RELEASE; PARTIAL RELEASE** Beneficiary shall release this Deed of Trust and the lien hereof by proper instrument upon payment and discharge of all Secured Obligations, including payment of

all reasonable expenses incurred by Beneficiary in connection with the execution of such release. In addition, Trustor shall be entitled to releases of portions of the Subject Property from the lien of this Deed of Trust as set forth in Section 2.14 of the Loan Agreement.

- 5.15 **SUBROGATION.** Beneficiary shall be subrogated to the lien of all encumbrances, whether released of record or not, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any loan secured by this Deed of Trust.
- 5.16 **RIGHT OF INSPECTION.** Beneficiary, its agents and employees, may enter the Subject Property at any reasonable time, after reasonable notice to Trustor, for the purpose of inspecting the Subject Property and ascertaining Trustor's compliance with the terms hereof.
- 5.17 **WETLANDS.** Trustor hereby represents and warrants to Beneficiary that any portion of the Subject Property consisting of or classified as wetlands, tidelands, or swamp and overflow lands shall not be developed in any manner which would violate any applicable statute, ordinance, rule or regulation of, or ownership or other right of, any federal, state or local governmental authority. Trustor shall indemnify, defend and hold Beneficiary harmless from and against any and all losses, costs, claims, damages, liabilities, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses which directly or indirectly arise out of or are in any way connected with the presence on the Subject Property of wetlands, tidelands or swamp and overflow lands, or any breach of the forgoing representation and warranty. The forgoing obligation of the Trustor to indemnify, defend and hold harmless Beneficiary shall survive the satisfaction, release and/or cancellation of the Secured Obligations and the release or partial release of this Deed of Trust.

ARTICLE 6. DEFAULT PROVISIONS

- 6.1 **DEFAULT.** For all purposes hereof, the term "Default" shall mean (a) at Beneficiary's option, the failure of Trustor to make any payment of principal or interest on the Note or to pay any other amount due hereunder or under the Note when the same is due and payable, whether at maturity, by acceleration or otherwise; (b) the failure of Trustor to perform any non-monetary obligation hereunder, or the failure to be true of any representation or warranty of Trustor contained herein and the continuance of such failure for thirty (30) days after notice, or within any longer grace period, if any, allowed in the Loan Agreement for such failure; or (c) the existence of any Event of Default as defined in the Loan Agreement.
- 6.2 **RIGHTS AND REMEDIES.** At any time after Default, Beneficiary shall have all the following rights and remedies:
- (a) With or without notice, to declare all Secured Obligations immediately due and payable;
 - (b) With or without notice, and without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or Default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of Beneficiary, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons;
 - (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of

Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;

- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;
- (e) To enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make, terminate, enforce or modify Leases of the Subject Property upon such terms and conditions as Beneficiary deems proper, to make repairs, alterations and improvements to the Subject Property as necessary, in Beneficiary's sole judgment, to protect or enhance the security hereof;
- (f) In person, by agent or by receiver, to enter upon, possess, manage and operate the Subject Property or any part thereof, to take and possess all documents, books, records, papers and accounts of Trustor or the then owner of the Subject Property, to make repairs, alterations and improvements to the Subject Property, and to do other acts, as necessary, in Beneficiary's sole judgment, to protect or enhance the security hereof. Without limiting the forgoing, and either with or without taking possession, Beneficiary, in its own name, shall have the right to terminate the license granted to Trustor in Section 3.2 hereof to receive the Payments and sue for or otherwise collect and receive such Payments, including those past due and unpaid, and apply the same as provided below in this Section 6.2(e). Without limiting the generality of the forgoing, Beneficiary may make, modify, enforce, cancel or accept surrender of any Lease; remove or evict any lessee; increase or decrease Payments under any Lease; appear in and defend any action or proceeding purporting to affect the Subject Property; perform and discharge each and every obligation, covenant and agreement of Trustor contained in any Lease; perform the obligations of Trustor under any purchase agreement affecting the Subject Property; continue the development, marketing and sale of the Subject Property or any portion thereof; complete any construction or development of the Subject Property; use all stores of materials and supplies on the Subject Property and replace and replenish such items at the expense of the receivership estate; borrow from Beneficiary such funds as may be reasonably be necessary to the effective exercise of the receiver's powers on such terms as may be agreed upon by the receiver and Beneficiary, but not in excess of the Default Interest Rate (as defined in the Note); and generally do anything which Trustor could legally do if Trustor were still in possession. Beneficiary may also take possession of any and all Payments that may previously have been collected by or on behalf of Trustor and that remain in the possession or control of Trustor, whether or not commingled with other funds of Trustor, and together with any bank or similar accounts in which payments may have been deposited or held. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary at the Subject Property any of Collateral which is not located thereat or has been removed therefrom. The entering upon and taking possession of Subject Property, the collection of any payments and the application thereof as aforesaid, shall not cure or waive any Default theretofore or thereafter occurring or affect any notice of Default hereunder of invalidate any act done pursuant to any such notice. Beneficiary or Beneficiary's agent shall have access to the books and records used in the operation and maintenance of the Subject Property and shall be liable to account for those Payments actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Subject Property by reason of anything done or left undone by Beneficiary. Nothing contained in this Section 6.2 shall require Beneficiary to incur any expense or do any act. If the Payments are not sufficient to meet the costs of taking control of and managing the

Subject Property and collecting the Payments, any funds expended by Beneficiary for such purposes shall become indebtedness of Trustor to Beneficiary secured by this Deed of Trust. Such amounts, together with interest and reasonable attorneys' fees, if applicable, as provided in Section 6.6 hereof, shall be immediately due and payable in accordance with the provisions hereof. Notwithstanding Beneficiary's continuance in possession or receipt in application of Payments, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of a Default, including the right to exercise the power of sale. Any of the actions referred to in this Section 6.2(e) may be taken by Beneficiary at such time as Beneficiary is so entitled, without regard to the adequacy of any of the Secured Obligations. All Payments collected by or on behalf of Beneficiary shall be applied as follows: (i) first, to the payment of all reasonable of fees of the receiver approved by the courts; (ii) second, to the payment of all prior and current real estate taxes and special assessments with respect to the Subject Property; (iii) third, to the payment of premiums then due for the insurance required by the provisions of this Deed of Trust; (iv) fourth, to the payment of payment of expenses incurred for normal maintenance of the Subject Property in such order of priority as Beneficiary shall deem proper, including the payment of reasonable management, brokerage and attorneys' fees and the disbursement and maintenance without interest of a reserve for replacement; (v) fifth, (A) if received prior to any foreclosure sale of the Subject Property, then to Beneficiary for payment of the indebtedness secured by this Deed of Trust then due and payable, but no such payment made after acceleration of the indebtedness secured hereby shall affect such acceleration, and (B) if received during or with respect to the period of redemption after a foreclosure sale of the Subject Property, then:

(aa) If the purchaser at the foreclosure sale is not Beneficiary, first to Beneficiary to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby, second to the purchaser as a credit to the redemption price, but only if the Subject Property is not redeemed, then (to the extent allowable under Colorado law or other applicable state law) to the purchaser of the Subject Property; and

(bb) If the purchaser at the foreclosure sale is Beneficiary, to Beneficiary to the extent of any deficiency of the sale proceeds to repay the indebtedness secured hereby and the balance to be retained by Beneficiary as a credit to the redemption price, but if the Subject Property is not redeemed, then (to the extent allowable under Colorado law or other applicable state law) to Beneficiary, whether or not such deficiency exists;

The rights and powers of Beneficiary under this Deed of Trust and the application of payments as provided above shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale;

- (g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received upon the Secured Obligations all in such order and manner as Beneficiary determines in its sole discretion; and
- (h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole and absolute discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole and absolute underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including, without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g. commissions, reasonable

attorneys' fees, and taxes), costs of any hazardous materials clean-up and monitoring, costs of deferred maintenance, repair, refurbishment and retrofit, costs of defending or settling litigation affecting the Subject Property, and lost opportunity costs (if any), including the time value of money during any anticipated holding period by Beneficiary; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the fact of additional collateral (if any), for the Secured Obligations; and (vii) such other factors or matters that Beneficiary (in its sole and absolute discretion) deems appropriate. In regard to the above, Trustor acknowledges and agrees that: (a) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (b) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (c) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios previously discussed between Trustor and Beneficiary; and (d) Beneficiary's credit bid may be (at Beneficiary's sole and absolute discretion) higher or lower than any appraised value of the Subject Property.

- 6.3 **APPLICATION OF FORECLOSURE SALE PROCEEDS.** Except as otherwise may be required by applicable law, Trustee shall apply all proceeds of any foreclosure sale as follows: (a) to the costs and expenses of exercising the power of sale and of sale, including the payment of Trustee's fees and reasonable attorneys' fees actually incurred pursuant to C.R.S. Section 38-37-103; (b) to payment of all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the rate of interest specified in the Note to be applicable on or after maturity or acceleration of the Note; (c) to payment of all other Secured Obligations; and (d) the remainder, if any, to the person or persons legally entitled thereto.
- 6.4 **APPLICATION OF OTHER SUMS.** All sums received by Beneficiary under this Deed of Trust, other than sums referred to in Section 6.3 shall, unless expressly provided to the contrary elsewhere, be applied to: (a) all costs and expenses incurred by Beneficiary, Trustee or any receiver under Section 6.2(d), including, without limitation, reasonable attorneys' fees; and (b) the remainder, in payment of the Secured Obligations in such order as Beneficiary shall determine in its sole discretion; provided, however, Beneficiary shall have no liability for funds not actually received by Beneficiary (or, in the case of a credit bid, deemed received).
- 6.5 **NO CURE OR WAIVER.** Neither Beneficiary's nor Trustee's nor any receiver's entry upon and taking possession of all or any part of the Subject Property and Collateral, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise or failure to exercise of any other right or remedy by Beneficiary or Trustee or any receiver shall cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and Trustor has cured all other defaults), or impair the status of the security, or prejudice Beneficiary or Trustee in the exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option or a subordination of the lien of this Deed of Trust.
- 6.6 **PAYMENT OF COSTS, EXPENSES AND ATTORNEYS' FEES.** Trustor agrees to pay to Beneficiary, within ten (10) days after demand, all costs and expenses incurred by Trustee and Beneficiary pursuant to Section 6.2 (including, without limitation, court costs and reasonable attorneys' and paralegals' fees, whether internal or external and whether incurred in litigation or not) with interest from the date of notice of expenditure until said sums have been paid at the rate of interest then applicable to the principal balance of the Note as specified therein.
- 6.7 **POWER TO FILE NOTICES AND CURE DEFAULTS.** Trustor hereby irrevocably appoints Beneficiary and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest, (b) upon the issuance

of a deed pursuant to the foreclosure of this Deed of Trust or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment or further assurance with respect to the Leases and Payments in favor of the grantee of any such deed, as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Beneficiary's security interests and rights in or to any of the Collateral, and (d) upon the occurrence of an event, act or omission which, with notice or passage of time or both, would constitute a Default, Beneficiary may perform any obligation of Trustor hereunder; provided, however, that: (i) Beneficiary as such attorney-in-fact shall only be accountable for such funds as are actually received by Beneficiary; and (ii) Beneficiary shall not be liable to Trustor or any other person or entity for any failure to act under this Section.

ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 **ADDITIONAL PROVISIONS.** The Loan Documents contain or incorporate by reference the entire agreement of the parties with respect to matters contemplated herein and supersede all prior negotiations. The Loan Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Subject Property and such further rights and agreements are incorporated herein by this reference.
- 7.2 **MERGER.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary consents to a merger in writing. Furthermore, the assignment of the Payments and other liens, security interests, rights and remedies granted hereunder to Beneficiary, and the covenants, representations, warranties and obligations or Trustor which are not satisfied or discharged by any foreclosure of the Subject Property, shall survive such foreclosure and remain in force and affect thereafter, it being acknowledged and agreed that all obligations of Trustor and rights and remedies of Beneficiary set forth herein are contractual in nature, and such obligations, rights and remedies, and all liens, assignments, security interests and other security provided to Beneficiary hereunder and under the other Loan Documents (but excluding the lien against the Subject Property or portions thereof that are foreclosed), shall not be extinguished by the subject foreclosure.
- 7.3 **OBLIGATIONS OF TRUSTOR, JOINT AND SEVERAL.** If more than one person has executed this Deed of Trust as "Trustor", the obligations of all such persons hereunder shall be joint and several.
- 7.4 **[INTENTIONALLY DELETED.]**
- 7.5 **WAIVER OF MARSHALING RIGHTS.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Subject Property, hereby waives all rights to have the Subject Property and/or any other property, including, without limitation, the Collateral, which is now or later may be security for any Secured Obligation ("Other Property") marshaled upon any foreclosure of this Deed of Trust or on a foreclosure of any other security for any of the Secured Obligations. Beneficiary shall have the right to sell, and any court in which foreclosure proceedings may be brought shall have the right to order a sale of, the Subject Property and any or all of the Collateral or Other Property as a whole or in separate parcels, in any order that Beneficiary may designate.
- 7.6 **RULES OF CONSTRUCTION.** When the identity of the parties or other circumstances make it appropriate the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. The term "Subject Property" means all and any part of the Subject Property and any interest in the Subject Property.

- 7.7 **SUCCESSORS IN INTEREST.** The terms, covenants, and conditions herein contained shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that this Section 7.7 does not waive or modify the provisions of Section 5.12.
- 7.8 **EXECUTION IN COUNTERPARTS.** This Deed of Trust may be executed in any number of counterparts, each of which, when executed and delivered to Beneficiary, will be deemed to be an original and all of which, taken together, will be deemed to be one and the same instrument.
- 7.9 **GOVERNING LAW; FORUM.** This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of California, except that (a) the nature and incidents of the real property interest created by this Deed of Trust, the procedure for perfecting that interest and the procedure for enforcing the rights and remedies of Beneficiary under this Deed of Trust against the Subject Property, and (b) the creation, perfection, priority and enforcement of the security interests in the Collateral granted by Trustor under this Deed of Trust, shall be governed by and construed in accordance with the laws of the State of Colorado. Trustor and Beneficiary irrevocably agree that, except as Beneficiary may elect in the exercise of its rights under Section 6.2 above, any legal action or proceeding arising out of or relating to this Deed of Trust or the Secured Obligations may be instituted and conducted only in any state or federal court sitting in San Francisco County, California, and that the exclusive venue for any such action or proceeding shall be in San Francisco County, California. Trustor hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court for any such legal action or proceeding and hereby irrevocably waives to the fullest extent permitted by law any objection which Trustor may now or hereafter have to such jurisdiction of any legal action or proceeding or to the laying of venue in San Francisco County, California.
- 7.10 **INCORPORATION.** Exhibits A and B, as attached, are incorporated into this Deed of Trust by this reference.
- 7.11 **NOTICES.** All notices or other communications required or permitted under this Deed of Trust must be in writing and must be personally delivered; mailed by U.S. registered or certified mail, return receipt requested, postage prepaid; sent by nationally recognized private courier service; or transmitted by telecopy, delivered or addressed to the appropriate party at its respective address set forth below.

Trustor:	Granby Realty Holdings LLC 999 Village Road P.O. Box 1110 Granby, CO 80446 Attn: Gerald E. Engle
Beneficiary:	Redwood Capital Finance Company, LLC 150 California Street, 22 nd Floor San Francisco, California 94111 Attn: Brian Heafey

Any party may change its address by giving written notice to the other party in accordance with this Section 7.11. If any notice or other communication is given by registered or certified mail, it will be effective seventy-two (72) hours after it is deposited in the U.S. mail, postage prepaid; or if given by any other permitted means, when it is received at the above address.

- 7.12 **NON-WAIVER.** No waiver of any Default or breach by Trustor hereunder or under any of the other Loan Documents shall be implied from any omission by Beneficiary to take action on account of such Default or breach, and no express waiver shall affect any Default or breach other than the Default or breach specified in the waiver and the waiver shall be operative only for the time and to the extent therein stated. A waiver of any covenant, term or condition contained herein or in any of

the other Loan Documents shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, and Trustor's failure to pay such entire sum then due shall be and continue to be a Default notwithstanding such acceptance of such amount on account, as aforesaid, and Beneficiary or Trustee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Beneficiary thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Deed of Trust conferred upon them, or either of them, upon the occurrence of a Default, and the right to proceed with a sale under any notice of Default and election to sell, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Beneficiary to any transaction or action which is subject to consent or approval of Beneficiary hereunder or under any of the other Loan Documents shall not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions.

- 7.13 **TIME.** Time is of the essence of this Deed of Trust and each provision hereof of which time is an element.
- 7.14 **CORRECTIONS.** Trustor will, upon request of Beneficiary or Trustee, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Beneficiary or Trustee to carry out more effectively the purposes of this Deed of Trust, to subject to the lien and security interest hereby created any of Trustor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

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17 of 25 R 129.00 D 0.00 GRAND COUNTY CLERK

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year set forth above.

"TRUSTOR"

GRANBY REALTY HOLDINGS LLC,
a Colorado limited liability company

By: 
Gerald E. Engle, Manager

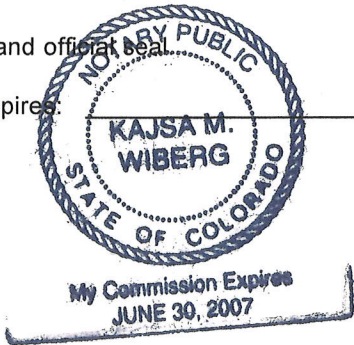
(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 1st day of June, 2005, by Gerald E. Engle, as Manager of Granby Realty Holdings LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires _____.



[Signature]
Notary Public

**EXHIBIT A
DESCRIPTION OF SUBJECT PROPERTY**

All the certain real property located in the County of Grand, State of Colorado, described as follows:

The following property located in Township 1 North, Range 76 West of the 6th P.M., County of Grand, State of Colorado:

Section 3:

The SW1/4SW1/4, EXCEPT that portion lying within the Denver and Rio Grande Western Railroad right-of-way;
N1/2SW1/4;
SW1/4NW1/4.

Section 4:

The S1/2, EXCEPT that portion located within the Denver and Rio Grande Western Railroad right-of-way;
S1/2NW1/4, EXCEPT that portion located within the Denver and Rio Grande Western Railroad right-of-way;
SE1/4NE1/4, EXCEPT S1/2 NW1/4 and the NE1/4 NE1/4 SW1/4 of Section 4, Township 1 North, Range 76 West of the 6th P.M. lying northerly of the Denver and Rio Grande Western Railroad right-of-way.

Section 5:

The SW1/4, EXCEPT SILVERPAGE SUBDIVISION;
W1/2SE1/4;
Lot 5;
Lot 6;
S1/2N1/2, EXCEPT that portion located within the Denver and Rio Grande Western Railroad right-of-way.

Section 6:

That portion of the S1/2NE1/4 located east of Highway 40;
That portion of the N1/2SE1/4 located east of Highway 40 and north of (1) the SILVERPAGE SUBDIVISION, and (2) the tract of land conveyed by SilverCreek Development Company to Teddy Gene Kellner by the Warranty Deed recorded in the real property records of Grand County, Colorado on January 6, 1987, in Book 410 at Page 642.

Section 7 (Entrance Parcel):

That portion of the NE1/4SE1/4 lying Easterly of Highway 40, EXCEPT (1) THE INN AT SILVERCREEK SUBDIVISION, and (2) that portion lying north of the property

described in the deed to Val Moritz Village, Inc. recorded in the real property records of Grand County, Colorado on July 14, 1971, in Book 178 at Page 709.

Section 8:

NW1/4NW1/4NW1/4;

E1/2NW1/4NW1/4;

E1/2NW1/4, EXCEPT (1) THE SILVERSAGE SUBDIVISION, (2) THE INNSBRUCK-VAL MORITZ SUBDIVISION, and (3) THE INN AT SILVERCREEK SUBDIVISION;

NE1/4SW1/4, EXCEPT (1) that portion located within THE INNSBRUCK-VAL MORITZ SUBDIVISION, and (2) that portion located within THE LAKEVIEW SUBDIVISION;

Lots 1 and 2;

E1/2E1/2;

NW1/4SE1/4.

Section 9:

Lots 1, 2, 3, 7, 8 and 9;

NE1/4SW1/4;

E1/2NW1/4;

N1/2NE1/4, EXCEPT that portion located within the Denver and Rio Grande Western Railroad right-of-way.

Section 10:

NW1/4NW1/4, EXCEPT that portion located within the Denver and Rio Grande Western Railroad right-of-way.

Section 15:

W1/2W1/2;

E1/2NW1/4, EXCEPT (1) the 23.99 acre open space parcel shown on the Final Plat of EAGLECREST SUBDIVISION, and (2) that portion located within the Denver and Rio Grande Western Railroad right-of-way.

Section 16:

ALL, EXCEPT (1) the 11.91 acre open space parcel shown on the Final Plat of SKI HAVEN ESTATES - PHASE I SUBDIVISION, (2) that portion of Phase I of THE SUMMIT AT SILVERCREEK platted as THE SUMMIT AT SILVERCREEK CONDOMINIUMS by the As Built Plat recorded in the real property records of Grand County, Colorado on February 22, 1985 at Reception No. 226723, (3) THE MOUNTAINSIDE AT SILVERCREEK PHASE I SUBDIVISION (including the 2.4

acre open space parcel shown on the final plat of such subdivision), (4) THE MOUNTAINSIDE AT SILVERCREEK PHASE II SUBDIVISION (including the 0.22 acre open space parcel shown on the final plat of such subdivision), (5) THE KICKING HORSE LODGES SUBDIVISION, (6) Lots 1 and 2, Block 4, SILVERGATE SUBDIVISION, (7) the two open space parcels shown on the final plat of SILVERGATE SUBDIVISION, and (8) the property described in the Quit Claim Deed from SilverCreek Development Company to The Summit at SilverCreek Homeowner's Association, recorded in the real property records of Grand County, Colorado on April 23, 1990 in Book 462 at Page 890. .

Section 17:
E1/2SW1/4;
SE1/4;
E1/2NE1/4.

Section 20:
NE1/4NW1/4;
NE1/4, EXCEPT (1) VAL MORITZ VILLAGE (SECOND FILING), and (2) the 7.8 acre open space parcel shown on the final plat of WESTRIDGE SUBDIVISION;
N1/2SE1/4, EXCEPT (1) VAL MORITZ VILLAGE (FIRST FILING), and (2) VAL MORITZ (SECOND FILING);
SE1/4SE1/4, EXCEPT VAL MORITZ VILLAGE (FIRST FILING).

Section 21:
ALL, EXCEPT (1) VAL MORITZ VILLAGE (FIRST FILING), and (2) VAL MORITZ VILLAGE (SECOND FILING).

Section 22:
W1/2NW1/4.

Section 28:
ALL, EXCEPT (1) VAL MORITZ VILLAGE (FIRST FILING), and (2) that portion conveyed by Val Moritz Group, Ltd., d/b/a SilverCreek Development Company, a Colorado limited partnership to Highlands Property Owners Group, Inc., a Colorado non-profit corporation by instrument recorded August 1, 1990, in Book 467 at Page 130.

Section 29:
NE1/4NE1/4;
S1/2 NE1/4;
SE1/4;
EXCEPT FROM SAID SECTION 29 (1) VAL MORITZ VILLAGE (FIRST FILING),
and

(2) the tract of land conveyed by Plaza Resources Company to Grand Investments, LLC by Special Warranty Deed recorded October 13, 1995 at Reception No. 95008910.

Section 32:

NE1/4, EXCEPT that portion lying within the Highway 40 right-of-way.

Section 33:

NW1/4;

NW1/4NE1/4;

S1/2NE1/4, EXCEPT (1) that portion conveyed by Val Moritz Investment Group, et al. to Grand County by instruments recorded May 18, 1983, in Book 328 at Page 625 and 628, June 8, 1983, in Book 329 at Page 809, May 22, 1984, in Book 350 at Pages 946 and 947, July 18, 1984, in Book 354 at Page 124, June 17, 1985, in Book 375 at Pages 46 and 48, August 23, 1985, in Book 379 at Page 963 and September 25, 1985, in Book 381 at Page 755, and (2) that portion conveyed by Val Moritz Investment Group, Ltd., d/b/a SilverCreek Development Company, a Colorado limited partnership to Highlands Property Owners Group, Inc., a Colorado non-profit corporation by instrument recorded August 1, 1990, in Book 467 at Page 130.

Commercial West Parcel:

That portion of Section 6 and Section 7, Township 1 North, Range 76 West of the Sixth P.M., Grand County, Colorado, more particularly described as follows:

All information contained herein is based upon the location of the existing B.L.M. brass cap monuments as established by the Bureau of Land Management dependent resurvey of a portion of Township 1 North, Range 76 West of the Sixth P.M., accepted October 10, 1979 and filed in the Colorado State Office November 1, 1979.

Considering the North line of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7 as evidenced by an existing B.L.M. brass cap monument at the Northwest corner of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7 and an existing B.L.M. brass cap monument at the Northeast corner of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7 as bearing South 89° 11' 02" East and with all bearings contained herein relative hereto.

Beginning at the Northwest corner of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7,

thence along the North line of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7 South 89° 11' 02" East, 980.44 feet to the True Point of Beginning,

thence continuing along the North line of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7 South 89° 11' 02" East, 334.12 feet to the Northeast corner of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7,

thence along the East line of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7 South 07° 12' 35" West, 1,277.49 feet to the Southeast corner of the Northwest one-quarter (NW1/4) of the Northeast one-quarter (NE1/4) of said Section 7 as evidenced by an existing B.L.M. brass cap monument, said point also being the Southwest corner of the Northeast one-quarter (NE1/4) of the Northeast one-quarter (NE1/4) of said Section 7,

thence along the South line of the Northeast one-quarter (NE1/4) of the Northeast one-quarter (NE1/4) of said Section 7 South 87° 57' 16" East, 912.53 feet,

thence North 02° 02' 44" East, 75.00 feet,

thence South 87° 57' 16" East, 114.54 feet to a point on the West right-of-way line of Highway 40, said point being on a curve concave to the Southwest, having a partial central angle of 01° 51' 52" and a radius of 1,282.50 feet, a radial line through said point bears North 82° 24' 55" East,

thence Northwesterly along the arc of said curve and said West right-of-way line 41.73 feet to the end of said curve, a radial line through said end of curve bears North 80° 33' 03" East,

thence along the West right-of-way line of said Highway 40, North 00° 58' 57" West, 243.40 feet to an existing highway right-of-way marker set in concrete,

thence along the West right-of-way line of said Highway 40, North 14° 24' 04" West, 19.16 feet to the Southeast corner of that certain parcel of land described in Deed recorded in Book 151, Page 17, records of said County,

thence along the South and West and North lines of said described parcel the following courses and distances,

North 78° 54' 04" West, 232.66 feet,

thence North 14° 24' 04" West, 572.10 feet,

thence North 75° 35' 56" East, 210.00 feet to the Northeast corner of said described parcel, said point being on the West right-of-way line of said Highway 40,

thence along said West right-of-way line North 14° 24' 04" West, 781.76 feet to the Southeast corner of that certain parcel of land described in Deed recorded in Book 194, Page 624, records of said County,

thence along the South and West and North lines of said described parcel the following courses and distances , South 75° 35' 56" West, 300.00 feet,

thence North 14° 24' 04" West, 382.76 feet,

thence South 89° 54' 04" East, 330.53 feet to the Northeast corner of said described parcel, said point being on the West right-of-way line of said Highway 40,

thence along said West right-of-way line North 14° 24' 04" West, 61.97 feet,

thence North 89° 54' 04" West, 695.50 feet,
thence South 04° 06' 34" West, 836.61 feet, more or less to the True Point of Beginning.

EXCEPT: Any portion of subject property lying within the property described in Book 154 at Page 119.

Val Moritz Village Lots:

Lots 1 through 21, 23, and 25 through 32, Block 1,
Lots 1 through 11, and 13 through 17, Block 2,
VAL MORITZ VILLAGE (FIRST FILING),
County of Grand,
State of Colorado.

2203-009879 05/02/2005 03:51P DT SARA L ROSENE
25 of 25 R 126.00 D 0.00 GRAND COUNTY CLERK

**EXHIBIT B
EXCLUDED ITEMS**

Property subject to that certain Deed of Trust dated as of July 28, 1999 by SilverCreek Holding Co., Inc. (predecessor in interest to Trustor) in favor of Bombardier Capital, Inc.

DATE FILED: July 12, 2021 10:28 AM
FILING ID: F5A20E4BCA6BC
CASE NUMBER: 2021CV30008

EXHIBIT C

RECEPTION#: 2016002540, 04/15/2016 at 02:54:25 PM, 1 OF 4, R \$26.00, Additional Names Fee: , , Doc Code:ADT, Sara L. Rosene, Grand County Clerk and Recorder, Colorado

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

Granby Prentice, LLC
c/o PCCP, LLC
10100 Santa Monica Boulevard, Suite 1000
Los Angeles, CA 90067
Attention: Portfolio Services Group

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

FOR VALUE RECEIVED, the undersigned, REDWOOD CAPITAL FINANCE COMPANY, LLC, a Delaware limited liability company ("Assignor"), hereby assigns, transfers and sets over to GRANBY PRENTICE, LLC, a Delaware limited liability company, all right, title and interest of Assignor, as beneficiary, under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of June 1, 2005, executed by Granby Realty Holdings LLC, a Colorado limited liability company, as Trustor, to the Public Trustee of the County of Grand, State of Colorado, as Trustee, for the benefit of Assignor, as beneficiary, and recorded on June 2, 2005 at Reception No. 2005-005679 in the Grand County, Colorado Official Records, as amended (as amended, "Deed of Trust") and encumbering the real property more particularly described therein that has not been released from the lien of the Deed of Trust prior to the date hereof, together with the note or notes therein described or referred to, the money due or to become due thereon with interest, and all rights accrued or to accrue under such Deed of Trust. Beneficiary transferred and assigned its right, title and interest under the Deed of Trust to U.S. Bank National Association ("U.S. Bank") for security purposes by Assignment of Deed of Trust dated as of June 1, 2005, and recorded on June 2, 2005, as Reception No. 2005-005681, Grand County, Colorado Official Records.

Dated: April 15, 2016

REDWOOD CAPITAL FINANCE COMPANY, LLC,
a Delaware limited liability company

By: _____
Name: Muvishka Ali
Title: Authorized Signatory

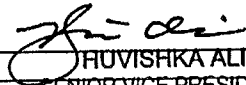
NCS- 7231915A MPLS (OB)

JOINDER

The undersigned, U.S. Bank National Association, as assignee under that certain Assignment of Deed of Trust dated as of June 1, 2005, made by Redwood Capital Finance Company, LLC, a Delaware limited liability company, in favor of the undersigned, recorded on June 2, 2005, as Reception No. 2005-005681, Grand County, Colorado Official Records, and assigning for security purposes Assignor's right, title and interest under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of June 1, 2005, and recorded on June 2, 2005, as Reception No. 2005-005679, Grand County, Colorado Official Records, hereby consents to and joins in the execution of the foregoing Assignment of Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing as to the interest of the undersigned.

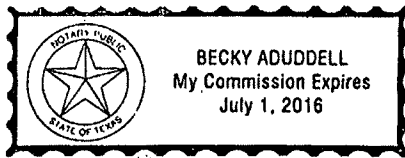
Date: April 15, 2016

U.S. BANK NATIONAL ASSOCIATION

By 
Name HUVISHKA ALI
Title SENIOR VICE PRESIDENT

STATE OF Texas)
) ss.
COUNTY OF Dallas)

The foregoing instrument was acknowledged before me this 7 day of April, 2016, by Huvishka Ali, the Authorized Signatory of REDWOOD CAPITAL FINANCE COMPANY, LLC, a Delaware limited liability company, on behalf of said company.



Becky Adudell
Notary Public in and for said County and State
My Commission Expires: 7-1-2016

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of April, 2016, by _____, the _____ of U.S. BANK NATIONAL ASSOCIATION, a national banking association, on behalf of said company.

Notary Public in and for said County and State
My Commission Expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

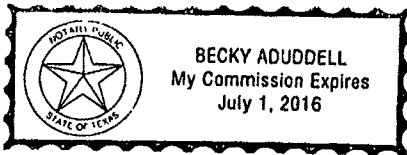
The foregoing instrument was acknowledged before me this ____ day of April, 2016, by _____, the _____ of REDWOOD CAPITAL FINANCE COMPANY, LLC, a Delaware limited liability company, on behalf of said company.

Notary Public in and for said County and State
My Commission Expires: _____

STATE OF Texas)
) ss.
COUNTY OF Dallas)

The foregoing instrument was acknowledged before me this 8 day of April, 2016, by Huvishka Ali, the Senior Vice President of U.S. BANK NATIONAL ASSOCIATION, a national banking association, on behalf of said company.

Becky Adudell
Notary Public in and for said County and State
My Commission Expires: 7-1-2016



DATE FILED: July 12, 2021 10:28 AM
FILING ID: F5A20E4BCA6BC
CASE NUMBER: 2021CV30008

EXHIBIT D

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CANCELLATION OF "REDWOOD CAPITAL FINANCE COMPANY, LLC", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF DECEMBER, A.D. 2018, AT 2:21 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

2947866 8100
SR# 20212182173


Authentication: 203313514
Date: 05-27-21

You may verify this certificate online at corp.delaware.gov/authver.shtml

**STATE OF DELAWARE
CERTIFICATE OF CANCELLATION**

1. The name of the limited liability company is _____
Redwood Capital Finance Company, LLC
2. The Certificate of Formation of the limited liability company was filed on
September 24, 1998

IN WITNESS WHEREOF, the undersigned has executed this Certificate of
Cancellation this 27th day of December, A.D. 2018.

By:  _____
Authorized Person(s)

Name: Steve Towle
Print or Type

DATE FILED: July 12, 2021 10:28 AM
FILING ID: F5A20E4BCA6BC
CASE NUMBER: 2021CV30008

EXHIBIT E



Secretary of State
Certificate of Cancellation
Limited Liability Company (LLC)

LLC-4/7

FILED
 Secretary of State
 State of California

DEC 28 2018

NGS

IMPORTANT — Read Instructions before completing this form.

There is **No Fee** for filing a Certificate of Cancellation

Copy Fees – First page \$1.00; each attachment page \$0.50;
 Certification Fee - \$5.00

1cc
 This Space For Office Use Only

1. Limited Liability Company Name (Enter the exact name of the LLC as it is recorded with the California Secretary of State)

Redwood Capital Finance Company, LLC

2. 12-Digit Secretary of State File Number

199826810029

3. Dissolution (California LLCs ONLY; Check the box if the vote to dissolve was made by the vote of **ALL** the members.)

The dissolution was made by a vote of **ALL** of the members of the California Limited Liability Company.

Note: If the above box is not checked, a **Certificate of Dissolution** (Form LLC-3) must be filed prior to or together with this Certificate of Cancellation. (California Corporations Code section 17707.08(a).)

4. Tax Liability Statement (Do not alter the Tax Liability Statement.)

All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

5. Cancellation Statement (Do not alter the Cancellation Statement.)

Upon the effective date of this Certificate of Cancellation, the Limited Liability Company's registration is cancelled and its powers, rights and privileges will cease in California.

6. Read and Sign Below (See instructions for signature requirements.)

By signing this document, I certify that the information is true and that I am authorized by California law to sign.

Signature

Steve Towle, Authorized signer

Type or Print Name

Signature

Type or Print Name

Signature

Type or Print Name

DATE FILED: July 12, 2021 10:28 AM
FILING ID: F5A20E4BCA6BC
CASE NUMBER: 2021CV30008

EXHIBIT F

AFFIDAVIT OF SERVICE

State of Colorado

County of Grand

District Court

Case Number: 2021CV030008

Plaintiff:

Granby Ranch Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado

vs.

Defendants:

Headwaters Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado; et al.

For: Norton & Smith, P.C

Received by Front Range Legal Process Service, Inc. on the 26th day of May, 2021 at 8:50 am to be served on Redwood Capital Finance Co., LLC Registered Agent: National Registered Agents, Inc., 1209 Orange Street, Wilmington, DE 19801. I, Danielle Stevens, being duly sworn, depose and say that on the 2nd day of June, 2021 at 2:20 p.m., executed service by delivering a true copy of the Summons; Amended Complaint; Exhibits 1 thru 8; Amended District Court Civil (CV) Case Cover Sheet For Initial Pleadings Of Complaint, Counterclaim, Cross-Claim Or Third Party Complaint; Notice of Commencement of Action; in accordance with state statutes in the manner marked below:

() PUBLIC AGENCY: By serving _____ as _____ of the within-named agency.

(x) CORPORATE SERVICE: By serving Robin Hutt-Banks as Intake Specialist Authorized to Accept.

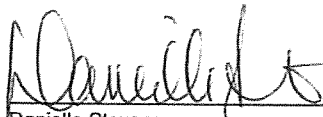
() POSTING _____

(x) DESCRIPTION) Age 60 Sex F Race African American Height 5'4 Weight 130 Hair Black Glasses _____

() OTHER SERVICE: As described in the Comments below by

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.



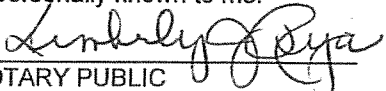
6/3/2021

Danielle Stevens

PROCESS SERVER # No #'s in Delaware

Appointed in accordance with State Statutes

Subscribed and Sworn to before me on the 3rd day of June, 2021 by the affiant who is personally known to me.


NOTARY PUBLIC

March 31, 2024

NOTARY EXPIRATION DATE

Front Range Legal Process Service, Inc.
145 W. Swallow Road
Fort Collins, CO 80525
(888) 387-3783

Our Job Serial Number: 2021003776

KIMBERLY J. RYAN
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires March 31, 2024