

ENT **98914:2016** PG 1 of 9
Jeffery Smith
Utah County Recorder
2016 Oct 06 09:39 AM FEE 26.00 BY MJ
RECORDED FOR First American Title Insurance
ELECTRONICALLY RECORDED

DEED OF TRUST
With Assignment of Rents

THIS DEED OF TRUST (this "Trust Deed"), is made and entered into as of September 23, 2016, by **JP 200 North, LLC**, a Utah limited liability corporation (hereinafter collectively referred to as "Trustor"), having an address of 180 North University Avenue, Suite 200, Provo, Utah 84601 in favor of **H & S Resources, LLC**, a Utah limited liability company, having an address of 1212 East 1130 North, Orem, Utah 84097 ("Beneficiary"), and **First American Title Insurance Company** (together with its permitted successors and permitted assigns, "Trustee"), whose address for all purposes hereunder is 215 South State, Suite 380, Salt Lake City, Utah 84111.

WITNESSETH:

A. Trustor hereby conveys, warrants, and transfers to Trustee, in trust, with power of sale, the Trustor's present and future estate, right, title and interest in and to the real property, with all improvements thereon, which is described in Exhibit "A," attached hereto and by this reference incorporated herein (the "Property"), together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof.

The Property shall be deemed to be the security hereby given for the payment of the indebtedness and the performance of the obligations evidenced and secured hereby.

B. This Trust Deed is given for the purpose of securing the following obligations (the "Obligations"):

(1) the payment of the Buyer as Additional Consideration under that certain Agreement of Purchase and Sale (the "Purchase Agreement") dated as of May 2016, in the amount of **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)** to be paid on the earlier of Buyer obtaining a "Building Permit" (as defined in the Purchase Agreement) or one (1) year from the date of closing.

C. In connection with this Trust Deed, the parties agree as follows:

(1) Trustor hereby represents and warrants that: (a) Trustor has the authority and

right to execute and deliver this Trust Deed; and (b) Trustor shall defend the title to the Property against all claims and demands whatsoever.

(2) Trustor shall promptly pay or cause to be paid to Beneficiary, or order, and shall promptly perform or cause to be performed, each and every payment and obligation on the part of Trustor provided to be paid or performed in connection with any of the Obligations. All of such payments and obligations are mandatory, and Trustor's failure to accomplish any of the same shall constitute a default under this Trust Deed.

(3) Trustor further agrees: (a) to maintain the Property at all times in good condition and repair; (b) not to commit any waste thereon; (c) to comply at all times with all laws, ordinances, regulations, covenants, codes, and restrictions in any manner affecting the Property; and (d) not to commit or permit any act upon the Property in violation of law.

(4) Trustor shall appear in and defend any action or proceeding purporting to or which might in any way affect the title to the Property or the security hereof or the rights or powers of Beneficiary or Trustee which arises from an act or event caused by Trustor after the date of this Deed of Trust; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee; and to deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

(5) Unless and to the extent otherwise agreed, in writing, by Trustor and Beneficiary, Trustor shall pay, at least ten (10) days before delinquent, all taxes, assessments, and governmental, municipal, or other charges or impositions levied against or affecting the Property, and shall promptly deliver all receipts for such payments to Beneficiary upon request; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

(6) Unless and to the extent otherwise agreed, in writing, by Trustor and Beneficiary, Trustor agrees to pay when due all water charges, utility payments, common maintenance assessments, mechanics, laborers and material-men's claims, all other Federal and State taxes, all of the foregoing without regard to whether they apply only to the Property or to whether such lien is senior or junior to this Trust Deed which arise during and are attributable to Trustor's ownership of the Property.

(7) Should Trustor fail to make any payment, to do any act or thing, or to perform any obligation herein provided to be paid, done or performed or to perform fully and timely any other Obligation covered under any of the other Agreements, at the time and in the manner herein or therein provided, Beneficiary or Trustee, may, but without any obligation to do so, and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereunder or thereunder: (a) make, do, pay, or perform the same in such manner and to such extent as Beneficiary or Trustee may deem reasonably necessary or desirable to protect the security hereof

or to protect any other legitimate interest of Beneficiary or Trustee, Beneficiary or Trustee being authorized to enter upon said property for such purposes; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and (d) in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

(8) Trustor shall repay to Beneficiary all sums, with interest thereon as hereafter provided, which at any time may be paid or advanced by Beneficiary for the payment of insurance, taxes, assessments, governmental, municipal, or other charges or impositions, title searches, title reports or abstracts, any obligation secured by a prior lien upon or prior interest in the Property and any other advances made by Beneficiary which are the responsibility of Trustor, to maintain this Trust Deed as a valid and subsisting lien upon the Property and to preserve and protect Beneficiary's, Trustee's or Trustor's interest therein or hereunder. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Trust Deed. The amount of each such advance shall, for the period during which it remains unpaid and both before and after judgment, bear interest at the rate of twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less, until paid in full.

(9) Trustor shall be deemed to be in default hereunder in the event: (a) Trustor shall fail to pay, perform or discharge or to cause to be paid, performed, or discharged, at the time and in the manner agreed upon herein, any of the terms and conditions of this Trust Deed, the Purchase Agreement, or any indebtedness, liability, contract or obligation secured by or referred to in this Trust Deed; (b) Trustor has made any material misrepresentation, or has failed to disclose any material fact, in any written representations and disclosures made by Trustor in order to induce Beneficiary to extend credit as evidenced by the Purchase Agreement, or other agreements which this Trust Deed secures; (c) there is a Transfer or attempted Transfer, (d) Trustor shall become insolvent, make an assignment for the benefit of creditors, be the subject of any bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation or dissolution proceedings; or (e) any debt or obligation of Borrower other than the Purchase Agreement is secured by the Property or any lien or judgment against Trustor attaches to the Property. For purposes hereof, "**Transfer**" shall mean the transfer, sale or encumbrance (including, without limitation, any other debt secured by the Property or lien or judgment attached to the Property) by the Trustor of any of the Property that is collateral for the payment of the Debt, or the attempt to do any of the forgoing, without the prior written consent of the Beneficiary.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

Time is of the essence hereof. With respect to a default hereunder, Trustor shall have only such cure period as may be permitted under the terms of the Purchase Agreement and the Utah Trust

Deed foreclosure statutes if any at all. Upon the occurrence of any default hereunder, all of the Obligations shall, at the option of Beneficiary and without notice or demand, immediately become due and payable and Beneficiary may:

(a) declare the entire indebtedness of Trustor to Beneficiary to be immediately due and payable;

(b) to the extent permitted by law, bring an action to collect any installment which is due or past due and payable without affecting or losing the security of this Trust Deed or waiving any other right or remedy allowed by law;

(c) foreclose this Trust Deed in the manner provided by law for the foreclosures of trust deeds or mortgages on real property, bring an action for damages, or exercise such other remedies or combinations of remedies as Beneficiary or Trustee may have under law and equity; and

(d) exercise the Power of Sale described below.

Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. No power or remedy herein provided shall be exclusive of any other power or remedy which now exists or which may hereafter exist by law.

(10) All procedural matters relating to exercise of the Power of Sale available under this Trust Deed (such as, but not limited to, the manner of giving notice of sale, the contents of such notice, the persons to receive notice, the time which must elapse between various stages of the proceeding, the method for establishing that proper notice has been given, and the manner in which the sale is conducted) shall be governed by the statutory law which is in effect at the time said power is exercised. In the event some or all of such procedural matters are not covered by then-effective legislation, the matters not covered shall be governed by the law which is in effect at the time this Trust Deed is executed. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale.

(11) Upon exercise of the Power of Sale, following failure of Trustor to timely cure a default hereunder, the Property may be sold in its entirety or in separate parts in such order as Trustee may determine. Any person, including Trustor and Beneficiary, may bid and purchase at the sale. Upon receipt of payment, Trustee shall execute and deliver a Trustee's Deed to the purchaser. The Trustee's Deed may contain recitals of compliance with any requirements of applicable law relating to exercise of the Power of Sale or to the sale. Such recitals shall constitute conclusive evidence of such compliance in favor of bona fide purchasers and encumbrances for value and prima facie evidence thereof in favor of all other persons. The Trustee's Deed shall operate to convey to the grantee, not subject to any right of redemption, and without any covenant or warranty, express or implied, the Trustee's title and all right, title, interest, claim of Trustor, of Trustor's successors in interest, and of all persons claiming by, through, or under them, in and to that part of the Property sold, including any and all rights, title interest, or claim in and to such part which may have been acquired by Trustor or Trustor's successors in interest subsequent to the execution of this Trust Deed. Trustee shall apply the proceeds of sale toward payment of the following, and in the order indicated:

(a) all costs and expenses (regardless of the particular nature thereof) incurred in connection with exercise of the Power of Sale or with the sale, including Trustee's and attorney's fees and the cost of any evidence of title procured in connection with the sale;

(b) each sum the payment of which is secured by this Trust Deed, together with accrued interest thereon at the applicable rate; and

(c) the balance, if any, to those entitled thereto or, at Trustee's discretion, such remainder may be deposited with the clerk of the district court of the county in which the sale took place.

Trustor hereby authorizes Trustee, upon Trustee's being presented with an affidavit signed by Beneficiary setting forth facts showing a default under this Trust Deed, to accept as true and conclusive all facts and statements contained therein and to rely and act thereon.

(12) In the event Trustor sells, conveys, transfers or disposes of the Property or any part thereof, either voluntarily or involuntarily, or agrees to do so, then Beneficiary shall have the right at Beneficiary's option to declare all amounts secured hereby immediately due and payable.

(13) In any judicial proceeding brought to foreclose this Trust Deed as a mortgage, Beneficiary shall be entitled to recover all costs and expenses (regardless of the particular nature thereof and whether incurred prior to or during such proceeding) incident to the realization of Beneficiary's rights hereunder, including court costs and reasonable attorneys' fees.

(14) Any amount due under this Deed of Trust or the Purchase Agreement may be paid, at any time, in lawful money of the United States of America.

(15) Notwithstanding any acceleration of the maturity of sums secured hereby which may occur pursuant to the terms of this Trust Deed, Trustor, any of Trustor's successors in

interest, any person having of record a subordinate lien or encumbrance affecting any part of the Property, or any Beneficiary having of record a subordinate trust deed affecting any part of the Property may, and at any time prior to the expiration of three months from the publication of notice of default as provided by law, reinstate this Trust Deed by: (a) paying to Beneficiary the entire amount which would then be due in connection with the Obligations had no acceleration occurred (the payment of any principal amount due may be paid as an Equity Transfer); (b) paying to Beneficiary all costs and expenses (regardless of the particular nature thereof) actually incurred in enforcing the terms of this Trust Deed or the Obligations, including Trustee's and attorneys' fees computed as hereinafter provided; and (c) curing in all respects each breach, if any, of Trustor's covenants and agreements contained herein or associated with any of the Obligations which relate to a subject other than the payment of money.

Upon timely fulfillment of the preceding three conditions all proceedings theretofore had or instituted in preparation of exercise of the Power of Sale available hereunder shall be canceled and this Trust Deed and the Obligations shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred.

(16) Trustor shall pay all filing costs associated with this Trust Deed.

(17) Trustor hereby requests that a copy of any notice of default and notice of sale hereunder be mailed to Trustor at the address for Trustor set forth at the outset of this instrument (or to any new principal office of Trustor). Such Notice shall be deemed to have been given for all purposes hereunder, when deposited in the United States Mail with postage prepaid.

(18) Beneficiary may, but shall be under no obligation to, through Beneficiary's delivery to Trustee of this Trust Deed and a written request therefor, and payment of all of the costs, fees, and expenses of Trustee and Beneficiary by Trustor, require Trustee to reconvey, release, and discharge from the operation of this Trust Deed all or any part of the Property. Such written request shall contain a description of that portion of the Property to be reconveyed, a statement of the consideration, if any, received by Beneficiary for such reconveyance, a declaration that Beneficiary is the owner and holder of the Obligations, and a statement that the Obligations have not been assigned or transferred. Any reconveyance executed by Trustee shall identify this Trust Deed and shall describe that portion of the Property being released from the lien hereof. The grantee in any such reconveyance may be described as "the person or persons entitled thereto." Any partial reconveyance shall not diminish Trustor's liability for the Obligations and shall not affect or impair the lien of this Trust Deed with respect to the remaining portion of the Property. This Trust Deed need not accompany a request for partial reconveyance but, upon Trustee's demand, Beneficiary shall exhibit the Purchase Agreement to the Trustee. Trustor shall have no right, under any circumstance, and regardless of the amount of the Additional Consideration under the Purchase Agreement that has been paid, to request or require any partial reconveyance of any portion of the Property; it being understood and agreed that the entire Property shall remain as collateral for the repayment of the Additional Consideration under the Purchase Agreement, and the performance of the obligations of Trustor hereunder until all of said obligations have been fully satisfied.

(19) At any time during the term of this Trust Deed, Beneficiary may appoint a

successor Trustee to act hereunder. All matters relating to the method of effecting a substitution of Trustees (including the information required to be contained in the instrument accomplishing substitution and necessary signatories to such instrument) shall be governed by the statutory law which is in effect at the time substitution takes place. In the event then-effective legislation does not cover some or all of the matters relating to the method of accomplishing a substitution of Trustees, the matters not covered shall be governed by the law which is in effect at the time this Trust Deed is executed. From the time a substitution of Trustees is accomplished the new Trustee shall succeed to all the power, duties, authority, and title of the Trustee named herein and of any successor Trustee.

(20) This instrument constitutes a Security Agreement as that term is used in the Utah Code (the "Code") and Trustor hereby grants to Beneficiary a security interest in all of the Property, which consists of fixtures subject to the Code, as security for the obligations hereunder. Pursuant to the Code, as amended, this instrument shall be effective as a financing statement filed as a fixture filing from the date of its recording.

(21) In addition to the foregoing, the parties agree that: (a) this Trust Deed shall be binding on, and shall inure to the benefit of, the parties to it and their respective permitted successors and assigns; (b) in the event that any provision of this Trust Deed shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Trust Deed; and (c) this Trust Deed shall be governed by, and construed in accordance with, the laws of the State of Utah.

(22) Should said Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

(23) As additional security, Trustor hereby assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the

right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

(24) The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

DATED as of the day and year first above written.

TRUSTOR:

JP 200 North, LLC, a Utah limited liability company

By: _____
Name: Cameron Gunter
Its: Manager

STATE OF UTAH)

: ss.

COUNTY OF UTAH)

On the _____ day of _____ in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared **Cameron Gunter**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his or her capacity, and that by each signature on the instrument, the entities upon behalf of which the individual acted executed the instrument.

NOTARY PUBLIC

EXHIBIT 'A'

File No.:

09/23/2016

Property:

71 West 300 North, Provo, UT 84601 and 57 West 300 North, Provo, UT 84601

COMMENCING 6 RODS EAST OF THE NORTHWEST CORNER OF LOT 5, BLOCK 89, PLAT "A", PROVO CITY SURVEY; THENCE EAST 3 RODS; THENCE SOUTH 5 RODS; THENCE WEST 3 RODS; THENCE SOUTH 5 RODS TO THE PLACE OF BEGINNING.

A.P.N. 04:084:0006

COMMENCING AT THE NORTHEAST CORNER OF LOT 5, BLOCK 89, PLAT "A", PROVO CITY SURVEY OF BUILDING LOTS; RUNNING THENCE SOUTH 82.50 FEET; THENCE WEST 49.50 FEET; THENCE NORTH 82.50 FEET; THENCE EAST 49.50 FEET TO THE PLACE OF BEGINNING.

A.P.N. 04:084:0007

Initials: _____